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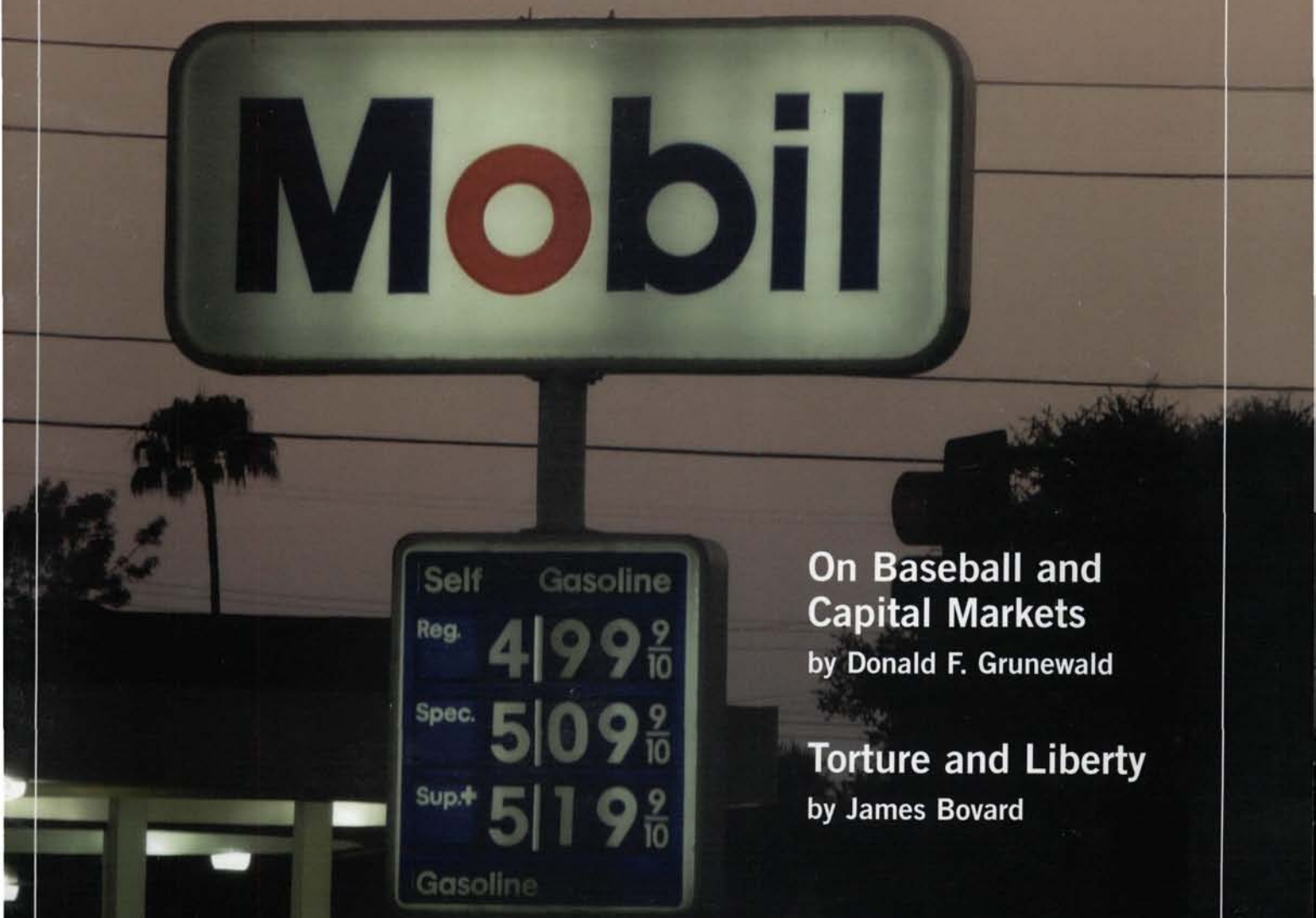
IDEAS ON LIBERTY

Whom Should We Thank for High Gas Prices?

by Michael Heberling



On Baseball and Capital Markets

by Donald F. Grunewald

Torture and Liberty

by James Bovard

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Lawrence W. Reed Elected President of FEE

The FEE Board of Trustees takes great pleasure in announcing the election of Lawrence W. Reed as president of the Foundation, effective September 1.

Larry Reed is well known to readers of *The Freeman*. Of the more than one thousand articles he has published, over 150 have appeared in this magazine in the past 30 years. His "Ideas and Consequences" column has been a regular feature since April 1994, and his most recent book, *Striking the Root: Essays on Liberty*, is drawn in large part from work that originally appeared in these pages.

Larry was a member of FEE's Board of Trustees from 1994 to 2001, serving as chairman during his last three years.

He has been president of the Mackinac Center for Public Policy in Midland, Michigan, since its founding in 1988. Under Larry's leadership, Mackinac has become one of the largest state-based free-market think tanks affiliated with the State Policy Network, which Larry also served as president and trustee.

Before joining Mackinac, he was chairman of the economics department at Northwood University in Midland. He did his undergraduate work in economics at Grove City College under Hans Sennholz, who later served as president of FEE.

FEE would also like to thank Richard M. Ebeling for his energetic leadership as president over the past five years, a time of dynamic growth for our Foundation.

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Perspective

Hands Off "Windfall" Profits

You don't have to like the oil companies to reject the windfall-profits tax. All you have to know is that if you tax something, you'll get less of it. No one can seriously dispute this piece of common sense. That leaves the strong suspicion that the motive for the tax is punitive: those companies are making too much money, so let's take some of it away.

That's cutting off one's nose to spite one's face—bad idea, not to mention that it would require the threat of physical force to accomplish it. No self-proclaimed peace advocate should endorse policies that are backed by aggressive force.

Does anyone really think that politicians and bureaucrats would spend the money better? You don't need detailed knowledge of the workings of government to see that the answer is no. Tax champions will promise to put the money into biofuels or infrastructure, but we know where it will really go: to boondoggles. Governments simply are not equipped to provide goods and services rationally—that is, cost-effectively and according to consumer demand—the way private markets are.

The size of an industry's profits is no business of the government, and no one has the right to gasoline at a particular price. All the government should be doing with respect to oil is ceasing to interfere with private property and the market process. We, the billions of participants in the marketplace, will take care of the rest.

To be sure, the oil companies have not distinguished themselves as champions of laissez faire. Oil executives have long been familiar with the halls of power, and the industry has enjoyed market-distorting privileges as well as suffered government-imposed burdens. For example, since World War II, the industry worked closely with the U.S. government and Arab and Iranian autocracies to gain and maintain access to Middle East oil. The substantial cost of securing the oil reserves has been shifted to the American taxpayers and subject populations through a costly interventionist U.S. foreign policy. American policymakers saw oil as a vital civilian and military resource, and the oil companies were the experts in turning crude into usable products. It was a

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match made in Washington. State-level cartelization policies also worked to the benefit of the companies. As a result, the price of gasoline most likely has not reflected the full cost of production, although those costs were recovered in a less-visible nonmarket form, through the tax system.

Major business leaders, including oil executives, long ago discovered the advantages of cooperating with big government. Drawing on the work of historians such as Gabriel Kolko, Murray Rothbard wrote, "[V]arious big-business groups [such as the National Civic Federation] had become, as early as the turn of the twentieth century, 'corporatists' or 'corporate liberals,' anxious to replace quasi-laissez-faire capitalism by a cartelized corporatist system, directed or even planned by Big Government in intimate partnership with Big Business, and creating Big Unions to participate as junior partners in this new 'mixed' economy. The push for the new corporate state was generated by an alliance between corporatist big-business groups and technocratic intellectuals, eager to help run and to apologize for the new system, which promised them a far plusher niche than did a freely competitive economy."

Business leaders, including Walter C. Teagle, president of Standard Oil of New Jersey, actively supported the New Deal. Teagle helped run the National Recovery Administration, which cartelized industry, including the oil industry, until the Supreme Court struck it down as unconstitutional.

This regrettable history, however, can't rationalize irrational policies. The route to laissez faire won't be through a windfall-profits tax and other interventions that would only bolster big government. It is one thing to demand an end to all government subsidies, but quite another to embrace the pernicious principle that the government may declare a level of profits "excessive" and then confiscate them. Better to keep the money out of the politicians' hands and work to make the private sector truly private. Neither profits nor losses should be socialized.

★ ★ ★

Gas prices and oil profits are up, and the politicians are having a field day. What's going on? Michael Heberling has the lowdown.

Why do so many people want to resort to government—that is, force—as a first resort and never give peaceful voluntary solutions a thought? Roy Cordato documents this sad state of affairs.

Net neutrality is a popular rationalization for regulating the Internet. It's another bad idea from the social engineers, Adam Summers says.

Imagine if baseball's rule-makers tried to prescribe rules for every aspect of the game, leaving no discretion for managers or players. Now imagine those rule-makers overseeing the capital markets. That nightmare scenario is real, Donald Grunewald reports.

America is not supposed to have an aristocracy, but tell that to government employees who enjoy an array of special privileges that the czar might have envied. Steven Greenhut catalogues some of the benefits of "public service."

The government's airport screeners can't direct passengers to disrobe. But now, thanks to high-tech scanners, they don't have to. Becky Akers has the ominous details.

Thomas Jefferson said that the proper attitude of free people toward government is "jealousy" not "confidence." If so, should they tolerate a government that insists it has the right to engage in torture? James Bovard examines this timely question.

Advocates of the freedom philosophy believe that the initiation of physical force is wrong. But does that require them to remain silent about causes beyond politics? Charles Johnson opts for a "thicker" libertarianism.

Here's what our columnists' toils have yielded this issue: Lawrence Reed expounds on the overriding importance of character. Thomas Szasz explains why we can have self-ownership or coercive psychiatry, but not both. Stephen Davies identifies the common element in financial crises. John Stossel ponders the arrogance of regulators. David Henderson shows that opposition to the "war on drugs" does not mean the denial of freedom of association. And Ivan Pongracic, Jr., dissecting the argument that inflation is the only way to solve the housing mess, responds, "It Just Ain't So!"

Books on economic history, economic freedom, Britain's Glorious Revolution, and the nanny state occupy our reviewers.

—Sheldon Richman
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Character, Liberty, and Economics

BY LAWRENCE W. REED

Over four decades I've written scores of articles, essays, and columns on economics; taught the subject at the university level; and given hundreds of speeches on it. In recent years the nexus between the economics of a free society and individual character has worked its way into my writing, speaking, and thinking with increasing emphasis. I now believe that nexus is the central issue we must address if our liberties and free economy are to be restored and preserved.

Activists in the free-market movement in the past 25 years have stressed the need for sound public-policy research and basic economic education. Think tanks and new media have sprung up to provide both. Though important, they are proving to be insufficient to overcome statist trends that are eroding our liberties. Why?

To some extent policy research is essentially locking the barn door after the horse has left. It targets politicians and the media commentators at stages in their lives when they are largely set in their ways and interested more in personal advancement than truth and liberty.

Economic education is certainly needed because young minds are not typically getting it in government schools. But even if economic education were dramatically improved, a free society wouldn't necessarily follow. Just like public-policy research, it can be undone by harmful themes in popular culture (movies, religion, music, literature, and even sports) and in the standards of conduct people practice as adults.

Even among the most ardent supporters of free-market causes are people who "leak" when it comes to their own bottom lines. A recent example was the corn farmer who berated me for opposing ethanol subsidies. Does he not understand basic economics? I've known him for years, and I believe he does. But that understanding melted away with the corrupting lure of a handout. His extensive economics knowledge was not enough to keep him from the public trough. We are losing the sense of shame that once accompanied the act of theft, private or public.

> We are losing the sense of shame that once accompanied the act of theft, private or public.

The missing ingredient here is character. In America's first century, we possessed it in abundance and even though there were no think tanks, very little economic education, and even less policy research, it kept our liberties substantially intact. People generally opposed the expansion of government power not because they read policy studies or earned degrees in economics, but because they placed a high priority on character. Using government to get something at somebody else's expense, or mortgaging the future for near-term gain, seemed dishonest and cynical to them, if not downright sinful and immoral.

Politicians and Statesmen

Within government, character is what differentiates a politician from a statesman. Statesmen don't seek public office for personal gain or attention. They often are people who take time out from productive careers to temporarily serve the public. They don't have to work for government because that's all they know how to do. They stand for a principled vision, not for what they think citizens will fall for. When a statesman gets elected, he doesn't forget the public-spirited

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citizens who sent him to office, becoming a mouthpiece for the permanent bureaucracy or some special interest that greased his campaign.

Because they seek the truth, statesmen are more likely to do what's right than what may be politically popular at the moment. You know where they stand because they say what they mean and they mean what they say. They do not engage in class warfare, race-baiting, or other divisive or partisan tactics that pull people apart. They do not buy votes with tax dollars. They don't make promises they can't keep or intend to break. They take responsibility for their actions. A statesman doesn't try to pull himself up by dragging somebody else down, and he doesn't try to convince people they're victims just so he can posture as their savior.

When it comes to managing public finances, statesmen prioritize. They don't behave as though government deserves an endlessly larger share of other people's money. They exhibit the courage to cut less important expenses to make way for more pressing ones. They don't try to build empires. Instead, they keep government within its proper bounds and trust in what free and enterprising people can accomplish. Politicians think that they're smart enough to plan other people's lives; statesmen are wise enough to understand what utter folly such arrogant attitudes really are. Statesmen, in other words, possess a level of character that an ordinary politician does not.

By almost any measure, the standards we as citizens keep and expect of those we elect have slipped badly in recent years. Though everybody complains about politicians who pander, perhaps they do it because we are increasingly a panderable people. Too many are willing to look the other way when politicians misbehave, as long as they are of the right party or deliver the goods we personally want.

Our celebrity-drenched culture focuses incessantly on the vapid and the irresponsible. Our role models would make our grandparents cringe. To many, insisting on sterling character seems too straight-laced and old-fashioned. We cut corners and sacrifice character all the time for power, money, attention, or other ephemeral gratifications.

Character Is Essential

Yet character is ultimately more important than all the college degrees, public offices, or even all the knowledge that one might accumulate in a lifetime. It puts both a concrete floor under one's future and an iron ceiling over it. Who in their right mind would want to live in a world without it?

Chief among the elements that define strong character are these: *honesty, humility, responsibility, self-discipline, self-reliance, optimism, a long-term focus, and a lust for learning.*

Chief among the elements that define strong character are these: *honesty, humility, responsibility, self-discipline, self-reliance, optimism, a long-term focus, and a lust for learning.* A free society is impossible without them. For example: *dishonest* people will lie and cheat and become even bigger liars and cheaters in elected office; people *who lack humility* become arrogant, condescending, know-it-all central-planner-types; *irresponsible* citizens blame others for the consequences of their own poor judgment; people who will not *discipline* themselves invite the intrusive control of others; those who eschew *self-reliance* are easily manipulated by those on whom they are dependent; *pessimists* dismiss what individuals can accomplish when given the freedom to try; *myopic* citizens will mortgage their future for the sake of a short-term "solution"; and *closed-minded, politically correct or head-in-the-sand types* will never learn from the lessons of history and human action.

Bad character leads to bad economics, which is bad for liberty. Ultimately, whether we live free and in harmony with the laws of economics or stumble in the dark thrall of serfdom is a character issue.

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The Fed Should Inflate to End the Financial Crisis? It Just Ain't So!

BY IVAN PONGRACIC, JR.

The current housing and financial crisis has many people blaming "greed and market forces" for unleashing a panoply of evils on the unsuspecting middle class. This has led to many bad proposals to solve the crisis, such as the April 14 *Wall Street Journal* op-ed "The Inflation Solution to the Housing Mess" by John Makin, a visiting scholar at the American Enterprise Institute.

His theme: "In my view, the least bad option is for the Federal Reserve to print money to help stabilize housing prices and financial markets. Yes, use reflation to soften the pain for Main Street and Wall Street." Makin justifies this proposal by claiming that a continued drop in housing prices will lead to the nationalization of the mortgage business, and thus inflation is the lesser of the two evils. But what if the current crisis is the result of the Fed's easy-money policy? Hair of the dog is a bad idea for housing crises as well as hangovers.

Hair of the dog is a bad idea for housing crises as well as hangovers.

Our current economic problems stem from the 2002–06 real-estate bubble. Falling mortgage rates during that period (roughly 7–8 down to 4–6 percent, depending on the mortgage type) led to a refinancing mania and bidding wars among buyers. Many individuals bought homes they could not afford in the hopes that values would rise fast enough to allow them to refinance the mortgages before the high payments kicked in. Almost everybody believed that house prices would continue to go upward without limit, thus creating a bubble. These actions by homebuyers and banks were rational responses to distorted signals carried by prices that were no longer reflecting the true scarcity of housing. The signals were distorted by the Fed's easy-money policy.

The Fed engages in a countercyclical policy: stimulate the economy when it begins to slow down and dampen it when it gets "overheated." The Fed stimulates by injecting new money into the market, and takes away the stimulus by removing money from the economy. It injects new money into the system by buying Treasury bonds from banks, a process called open-market operations. When the Fed buys the bonds, private banks get the newly created money (called reserves). The forces of competition among banks flushed with new money drive down the price of borrowing—the interest rate—which increases consumption and investment, stimulating the economy.

The problem is that the Fed stimulated too deeply and for far too long. Responding to the recession of 2001, it lowered the federal funds rate (the Fed's main interest-rate target) from 6.5 percent in January 2001 to 1 percent in June 2003, kept it there for a full year despite the fact that the recession ended in late 2001, and then slowly brought it back up over the following two years. The monetary base, the fundamental measure of monetary liabilities created and directly controlled by the Fed, went up 30 percent between December 2000 and December 2004—a significant increase. That large amount of new liquidity first went into bank vaults, from where it was loaned out. The problem was that

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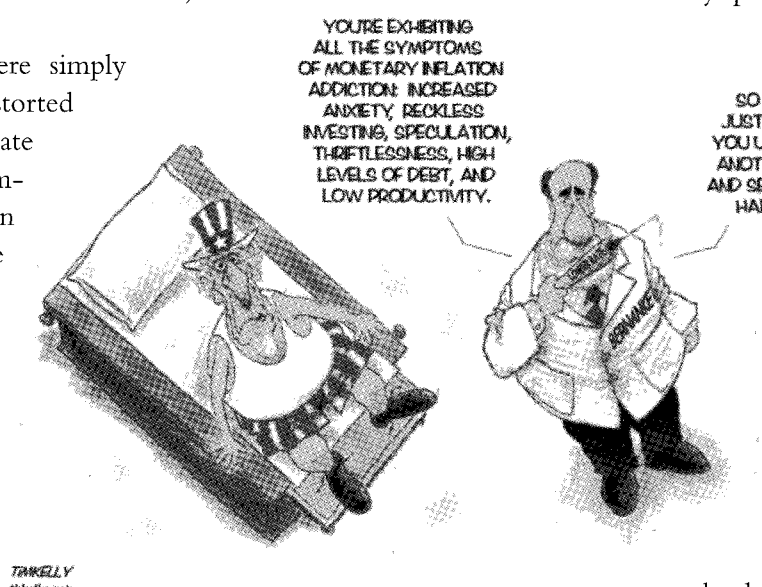
this liquidity was artificial: it did not consist of individuals' savings, their forgone consumption and sacrifices. It thus fooled most people into thinking that they had somehow escaped the bounds of scarcity—that they could have their cake and eat it, too.

Low interest rates made borrowing attractive, and people responded by buying homes either to live in or as investments, driving up demand and prices. Banks started cutting back on credit checks when doling out mortgage loans, a fact that some now blame for the bubble. And it is true that the bubble was most certainly exacerbated by securitization, which allowed banks to sell their mortgages to hedge funds and avoid holding risky loans. This created incentives for banks to seek out the high-risk marginal borrowers. Hence the infamous "NINJA" loans—No Income, No Job, No Assets.

However, banks were simply responding to the distorted signals in the real-estate markets. Finding themselves swimming in money, they did the only thing they could to get rid of it all: lower the standards on who could get the mortgage loans. As long as housing values were going up so rapidly, they couldn't lose by making loans, even to high-risk borrowers.


YOU'RE EXHIBITING ALL THE SYMPTOMS OF MONETARY INFLATION ADDICTION: INCREASED ANXIETY, RECKLESS INVESTING, SPECULATION, THRIFTLESSNESS, HIGH LEVELS OF DEBT, AND LOW PRODUCTIVITY.
SO LET'S JUST HOOK YOU UP WITH ANOTHER FIX AND SEE WHAT HAPPENS.
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So if the Fed's expansion of liquidity is the cause of the current mess, can more of it save us? Indiscriminately pumping up liquidity will certainly lead to price inflation, of which there are now increasing signs. When the Fed last opened the money spigots, we saw the dollar plummet against all major currencies, leading to a dramatic rise in the price of oil, commodities, and food. The media and the politicians seem utterly oblivious to the monetary cause of these problems. We are already beginning to deal with the consequences of inflation: cost-of-living increases as prices rise faster than our incomes, destruction of our savings, difficulties setting long-term contracts under inflation uncertainty, and maybe most important, distortions of relative prices, making economic calculation by entrepreneurs and consumers much less reliable.

It's not surprising that Wall Street wants to be bailed out through inflation. They would receive the benefits of the increased liquidity while the rest of us would bear the costs. Their profits would remain private while their losses would be socialized and spread out among the rest of the society through inflation. It is exactly this kind of policy that contributed to the current mess. In 1998 the Long-Term Capital Management hedge fund was deemed "too big to fail" and was bailed out. In the process, the Fed created a severe moral hazard: by protecting some people from the downside of their risky actions, the central bank encouraged such actions. The Fed's bailout policy is at least partly responsible for the Wall Street excesses; the hedge funds came to expect that the Fed would not chance a failure of the financial system. The so-called "Greenspan put" is now clearly the "Bernanke put."

If the Fed continues to inflate, as Makin recommends, it would simply postpone the day of reckoning. Rather than letting the bad investments be cleared out now, reflation would further distort relative prices, likely leading to significant errors down the road and more bubbles in other sectors (as may already be happening in the commodities markets). This is how one crisis begets a bigger one. We must allow the distortions introduced by the activist Fed to be discovered and corrected. The odds that the government will eventually nationalize the mortgage markets will be much higher if the current crisis is treated by planting the seeds for a much bigger one in the future.

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Whom Should We Thank for High Gas Prices?

BY MICHAEL HEBERLING

I am writing this after having just filled my tank with gasoline at $3.99 per gallon. Oil is over $125 a barrel. Big Oil and their CEOs are the hands-down favorite to win the Snidely Whiplash People's Choice Award. Since Big Oil is our favorite villain, no one really wants to hear about the other deserving nominees in this category: Big Government and Big Green.

When Big Government calls for investigations to look into the "obscene profits" of Big Oil, this is always a crowd-pleaser. However, we rarely hear about the results of these investigations because they almost always implicate Big Government as the primary reason for the high prices and price spikes.

Another Big Government strategy to address high gas prices is to propose legislation that outlaws "greed" and "price gouging." Big Oil has become the poster child for "free-market failure." In reality, the petroleum industry, as it now exists, is anything but free market. A case could be made that it is one of the most regulated industries—if not the most regulated—in the United States. Decades of federal, state, and local government micromanagement of the petroleum industry have helped to create the mess we are in. The phrase "perfect storm" has been overused, but it helps to explain why we have gas at $3.99 a gallon. While "greed" is easy to understand, there are many interrelated facets of this problem that are not so easily understood.

Decades of federal, state, and local government micromanagement of the petroleum industry have helped to create the mess we are in.

The United States is no longer the primary customer for petroleum. Americans now have to compete for petroleum on the world market with people in the emerging economies of India and China. To no surprise, the Economics-101 concepts *supply and demand* come into play, driving up the cost of petroleum. What further complicates the situation is the weak U.S. dollar relative to other currencies. This helps to explain why oil is over $120 a barrel.

We could alleviate our supply problems by developing domestic sources of petroleum through privatization and free markets. The Arctic National Wildlife Refuge in Alaska has an estimated ten billion barrels of oil. Unfortunately, the Big Government/Big Green coalition has declared the reserve off-limits. The continental shelf could provide us with another 85 billion barrels of oil. But this plus the Florida and California coasts are off-limits because of environmental concerns.

The high price of gasoline now makes synthetic fuel derived from coal an attractive alternative or supplement to petroleum. The environmentalists are blocking it because it has an unacceptable carbon footprint. China, however, does not see this as a problem. The Chinese are spending billions to develop coal as a fuel.

If we can't use domestic oil, what will the Big Government/Big Green coalition allow us to do? Their number one answer is "burn food." But that pesky

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supply-and-demand issue keeps coming back to complicate things. Burning food in addition to eating it drives up the price. This is an inevitable outcome when you have people, livestock, and automobiles competing for limited supplies of food. If we continue down this ridiculous path, there is only one plausible outcome. We will have no choice but to develop more and more pristine wildlife habitat for agriculture. How long will Big Green allow that?

As it turns out, burning food as a fuel is not very efficient. Corn-derived ethanol yields 35 percent less energy than gasoline. So as the percentage of ethanol in gasoline goes up, miles per gallon will go down. Translation: Our demand for gas has gone and will continue to go up thanks to this government-promoted biofuel program.

We have not built a new oil refinery in the last 30 years, although existing ones have been expanded and updated. But 24 refineries have closed since 1995. For many of the marginal facilities, it was just too costly to comply with the burgeoning level of environmental regulations. Between 1994 and 2003 Big Oil spent $47.4 billion of their profits not to build new refineries, but rather to simply bring the remaining ones into environmental compliance.

To address the refining-capacity shortfall, there have been endless calls to build new refineries. This has become next to impossible because we now adhere to the BANANA philosophy. This stands for Build Absolutely Nothing Anywhere Near Anyone. BANANA has replaced NIMBY (Not In My Back Yard). According to the *Tucson Citizen*, a company in Arizona sought a permit in 1998 to build a refinery in Mobile, outside Phoenix. This would be the first new refinery built domestically since 1976. Five years later, the state of Arizona determined that the proposed location would not be in compliance with the ozone standards. The company then agreed to build the refinery near Yuma. Two years later, in 2005, the final permit was issued. This was seven years after the original request. Barring any further Big Government/Big Green roadblocks, we may have the first new U.S. refinery in 2011.

However, don't expect a big rush to build many other new refineries. Through government biofuel and fuel-efficiency programs, the politicians have mandated a 20 percent reduction in our use of refined gasoline over the next ten years. Why would Big Oil increase the supply (by building more refineries) to meet a decreasing demand for gasoline? It should come as no surprise that many of the plans to build new refineries or to further expand existing ones have been put on hold. Government incentives and disincentives (in this case) really work.

Fewer Refineries Mean Fewer Options

Since building new refineries is not really a viable option for Big Oil, we are putting all of our eggs (gasoline production) into fewer and fewer refinery baskets. When the remaining refineries go offline due to accidents or routine maintenance, or to incorporate environmental changes, the impact on the entire nation's fuel system could be both profound and immediate. Translation: price spikes.

Gasoline-price volatility is further exacerbated by government regulations that call for different types of gasoline in different parts of the country at different times of the year. We have winter gas and summer gas. There is Chicago gas and California gas. This means that entrepreneurs can't readily move gasoline from where it is less scarce to where it is more scarce. We also still have the requirement for reformulated gas (RFG) in many areas even though the additive MTBE was determined to be dangerous to the environment. (Is that ironic? See my "Government-Reformulated Gas: Bad in More Ways than One," *The Freeman*, September 2003, http://tinyurl.com/5kkrb5.)

As to be expected, the politicians' "solutions" are nothing of the kind. Once again, some call for a windfall-profits tax. That's a terrible idea on many levels, but suffice it to say here that it won't raise supplies or lower prices. And what about the three-month gasoline-tax holiday being called for? It might bring prices down a bit—or it might not. And no doubt, the government will try to make up the revenue in other ways. All in all, the idea is an expedient, near-term, and unsatisfactory proposal. What we need is a long-term regulation holiday.

The next time you fill up your tank, don't direct your wrath at Big Oil—they appear to be price takers. Direct it at Big Government and Big Green.

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Too Much Freedom

BY ROY E. CORDATO

It's been said that when the only tool you have is a hammer, every problem looks like a nail. For politicians, bureaucrats, and many activists, when the only tool they have is coercion, the cause of every problem looks like too much freedom.

Make no mistake: if you are committed to accomplishing your social goals by using government power, then by definition your only tool is the hammer of coercion. An observation often attributed to George Washington has it that "Government is not reason; it is not eloquence; it is force." And when people choose to use government to accomplish their goals, they are choosing to use force, not reason and certainly not eloquence.

True to form, governments at all levels have affirmed Washington's reputed observation. But I think state and local governments are the biggest culprits. Issues like eminent domain and gun control, where constitutional issues arise, tend to get widespread publicity and public scrutiny, but routine tyranny occurs with respect to day-to-day issues that are often considered legitimate local-government functions.

If a local grocery store's produce department runs out of oranges or its deli has a shortage of roast beef, it doesn't blame its customers for having too much freedom to purchase fruit and meat. It simply finds a way to accommodate that freedom and meet the demand. That's not how governments respond.

The People Are Nails

Typical is Raleigh, North Carolina's approach to solving its drought and water-shortage problems. The city for much of the past year has been running short of water, one of only a handful of goods it is charged with supplying. Its response has been to blame people for having too much freedom, including the freedoms to water their lawns, wash their cars, power-wash their homes, and most recently, to enjoy the conveniences of a garbage disposal. In the name of solving its water shortage, Raleigh has passed an ordinance banning the installation or replacement of all garbage disposals. Instead of city politicians' asking themselves, "How can we accommodate our citizens' free choices?," as the grocery store would, they immediately blame the problem on those freedoms. This is their nail, and their solution is the hammer of force.

Here's another example. For years, city and regional transportation planners have faced traffic congestion in larger cities and medium-size communities around the country. Traffic congestion is much like a water shortage—it is a shortage of road space. Governments have massively failed to adequately accommodate people's free choices regarding their transportation needs. And as with the water shortage, politicians think the traffic problem is caused by too much freedom, specifically, too much freedom in the use of cars.

Many states, instead of better managing the supply of roads, have adopted an approach euphemistically known as transportation-demand management (TDM). As the Nevada Department of Transportation describes it, TDM "is a general term for actions that encourage a decrease in the demand for the existing transportation system." And as noted by the North Carolina Department of Transportation, "[M]ost TDM strategies deal with the modification of travel behaviors."

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Ultimately, TDM is a collection of policies meant to force people out of their cars, either directly or through artificial incentives, and onto public transportation. But this is only feasible when people live in high-density communities. So not only does their freedom to make transportation decisions need to be "modified," but so does their freedom to choose living arrangements. Along with transportation-demand management comes "housing demand management" and "land-use demand management." To accommodate public-transportation systems and to discourage driving, TDM typically includes new zoning laws intended to cram people into areas with dozens of housing units per acre. Transportation planners have taken it on themselves to substitute congested living arrangements for congestion on the roads.

According to transportation planners in North Carolina the "vision [of TDM] extends far beyond public transportation. It embraces notions of how *we* want to live in the 21st Century and what *we* want our neighborhoods and communities to become."

It is quite clear that the "we" being referred to is not individual citizens and families. It is instead the paternalistic "we" of bureaucrats and government planners.

Environmental Regulation Is the New Hammer

Probably the most pernicious example of government-as-force-not-reason is the approach now being taken by many state governments ostensibly to fight global warming. While the federal government is looking at broad-brush policies such as carbon taxes or cap-and-trade programs, state-level policies are much more aggressive in using global warming as an excuse to micromanage people's choices. More than 25 states have hired an advocacy group, the Center for Climate Strategies (CCS), that poses as an objective consultant to help devise policies that would force people to modify their behavior in order to reduce carbon-dioxide emissions. CCS can charge bargain-basement consulting fees to the states because it is subsidized by a host of statist left foundations, including the Rockefeller Brothers Fund, Heinz Endowments, Turner Foundation, and Z. Smith Reynolds Foundation. (See the critical website www.climatestrategieswatch.com.)

While there are competing theories regarding the causes of global warming (for example, see research by Duke physicists Nicola Scafetta and Bruce West on the influence of the sun on climate change at http://tinyurl.com/rs2hp), in hiring CCS, the states agree not to discuss these alternative theories when formulating policy. In fact, they must agree that the science is settled with regard to human-generated greenhouse gases.

This is ominous to those concerned about freedom because other theories, such as those related to natural climate variation, would not imply the need for coercive restrictions on people's lifestyle choices. In other words, the only theory of global warming that these states are considering is the one that has freedom as the culprit. It is important to note that everything humans do, including breathing, emits carbon dioxide. The implication then is that all production and consumption activities are up for scrutiny and possible coercive control. The proposals CCS suggests to every state are generally the same. They include restrictions on the kinds of cars people can drive, fuels they can use to heat and light their homes, and auto insurance and appliances they are allowed to buy. The size of the lots they can build houses on and the size of those houses are also subject to the proposed restrictions.

The actual goals of such proposals are questionable. Indisputably, these restrictions will not reduce global temperatures, even if the whole world adopted them—and state officials and their CCS consultants know it. This implies that these proposals are not really about global warming, but are instead exercises in what could be called "lifestyle imperialism." Like laws against homosexuality or gambling, they are in fact an attempt to legislate morality.

Given the principles behind the founding of the United States, policymakers need to view individual freedom as a moral imperative. They should realize that it is not the role of government to solve all conceivable problems but to protect liberty. To the extent that government takes on a problem-solving role, the question decision-makers should continually ask themselves is: "How can we achieve our objective without limiting people's freedom to live as they see fit?" Unfortunately, many, if not most, bureaucrats and policymakers seem more interested in asking which freedoms they can get away with limiting.

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Net Neutrality or Government Brutality?

BY ADAM B. SUMMERS

Over the past six years or so, network neutrality, or "net neutrality," has risen from an obscure techie buzz phrase to a bona fide political issue and rallying cry for some strange political bedfellows. The current debate comprises competing views on economics, regulation, free speech, property rights, and even the supposed rights of individuals and businesses to a certain Internet experience. Would a net-neutrality mandate protect the rights of some or merely trample the fundamental rights of others and stifle competition and innovation?

Much of the perplexity surrounding net neutrality stems from ambiguity and confusion over the very definition of the term. The concept concerns how information is transmitted over the Internet. Data are moved in "packets" through networks of computers and routers. Currently, these data are processed with little regard to what kind of information they are—be they important medical data, streaming video, or spam.

Generally speaking, net neutrality is the notion that all content, applications, and services should be treated the same by Internet service providers (ISPs).

Generally speaking, net neutrality is the notion that all content, applications, and services should be treated the same by Internet service providers (ISPs). Net-neutrality proponents fear that network operators might someday discriminate against certain types of information by charging fees to particular content providers in exchange for guarantees of higher-quality service or by blocking some content completely.

Such a proposal may sound innocuous enough, but the problem is that the proliferation of things like streaming video and online gaming are taking up increasingly large amounts of bandwidth and are sensitive to delay. This Internet congestion can lead to the degradation of service for all Internet users. Slight delays may hardly be noticeable in e-mail or web-browser applications, but can be more serious for video-content providers or Voice over Internet Protocol (VoIP), which allows people to make phone calls over the Internet.

Then there is the question whether the government has any right to tell ISPs how to manage their own networks and pricing structures, which will be discussed in some detail below.

Adding to the confusion is the fact that net-neutrality advocates disagree over just how much control network operators should be allowed to maintain. Some believe that neutrality means data packets must be handled on a first-come-first-served basis without exception, while others would permit the existence of differing quality-of-service levels as long as there are no special fees (no price discrimination) for higher service levels. Still others would allow prioritization of data and differing quality levels (along with tiered pricing), provided that there were no exclusivity in service contracts. Or, in the words of Sir Tim Berners-Lee, developer of the World Wide Web, "We pay for connection to the Net as though it were a cloud which magi-

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cally delivers our packets. We may pay for a higher or a lower quality of service. We may pay for a service which has the characteristics of being good for video, or quality audio. But we each pay to connect to the Net, but no one can pay for exclusive access to me."

Since the most restrictive definition is the one that is typically embodied in legislation and that raises the most serious issues, it is the one on which this article will focus.

The Birth of "Net Neutrality"

The idea of network neutrality originated during the late 1990s as some feared potential threats to the "end-to-end" nature of the Internet, although some trace the concept back to the age of the telegram, when Congress passed the Pacific Telegraph Act of 1860. The act subsidized a transcontinental telegraph line and stated that "messages received from any individual, company, or corporation, or from any telegraph lines connecting with this line at either of its termini, shall be impartially transmitted in the order of their reception, excepting that the dispatches of the government shall have priority." The term "network neutrality" was coined by Columbia Law School professor Tim Wu in his 2002 paper, "Network Neutrality, Broadband Discrimination," in which he promotes a "network anti-discrimination regime."

Dr. Vinton Cerf playing Spacewar! on the Computer History Museum's PDP-1 computer.
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There have been several efforts to pass net-neutrality laws at the federal and state levels, but they have thus far been rebuffed. That may change, however, particularly if Senator Barack Obama wins the presidential election in November. He has expressed support for net neutrality, dating back to a 2006 bill (S 2817). The prospect of imposing government regulation on what is essentially a free market might lead one to believe that Democrats are more likely to support net-neutrality mandates than Republicans (notwithstanding the fact that the GOP frequently acts in contradiction to its pro-market rhetoric), and, indeed, there is some truth to this.

Generally speaking, most members of the political left have tended to favor net-neutrality legislation and most on the right have tended to oppose it, but there are notable exceptions. Organizations like MoveOn.org, the American Civil Liberties Union, and a number of liberal bloggers have come out in favor of such legislation, for example, but former Clinton White House press secretary Mike McCurry is co-chairman of the Hands Off the Internet Coalition, which opposes it. On the other hand, most Republicans oppose net neutrality, but conservative groups such as the Christian Coalition and Gun Owners of America support it.

Even the most important innovators of the Internet are divided on the issue. Vinton Cerf, a co-inventor of the Internet Protocol (IP) and vice president and "Chief Internet Evangelist" for Google, is for it. Bob Kahn, inventor of the Transmission Control Protocol (TCP), which provides reliable delivery of a stream of bytes over the Internet, and David Farber, a computer science and public-policy professor at Carnegie Mellon University who is known as the "grandfather of the Internet," are against it.

And then there are the corporate interests. Large web-content providers such as Google, Yahoo!, eBay, and YouTube support net-neutrality mandates because they fear the prospect of having to pay higher prices to ensure the quality of their content, while cable and telecommunications companies such as AT&T, Verizon, Comcast, and Cox Cable oppose it because they feel they should have the freedom to operate their own networks and set their own prices without interference from the government.

In 2004 then-Federal Communications Commission (FCC) Chairman Michael Powell outlined a set of nondiscrimination principles. Powell argued that the broadband industry should offer consumers freedom to access content, run applications, attach devices, and obtain service-plan information.

When AT&T and BellSouth merged in 2006, the FCC attached a net-neutrality provision as condition of its approval. Under the measure the company agreed "not to provide or to sell to Internet content,

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application, or service providers, including those affiliated with AT&T/BellSouth, any service that privileges, degrades or prioritizes any packet transmitted over AT&T/BellSouth's wireline broadband Internet access service based on its source, ownership or destination." AT&T agreed to the concession in order to break a 2–2 deadlock among the commissioners that had held up the merger for several months. The provision was narrowly tailored to AT&T, however, and included a 30-month expiration date. Moreover, current FCC chairman Kevin Martin and fellow Republican commissioner Deborah Taylor Tate warned that the measure "does not mean that the commission has adopted an additional Net neutrality principle. We continue to believe such a requirement is not necessary and may impede infrastructure deployment," they wrote in a statement. Martin and Tate added, "Thus, although AT&T may make a voluntary business decision, it cannot dictate or bind government policy."

Proposed Legislative "Solutions"

S 2817 was just one of many attempts to codify net-neutrality regulations in recent years. An attempt to attach a neutrality provision to the purportedly landmark 2006 telecommunications bill (S 2686) failed on an 11–11 committee vote, and S 2686 ended up failing in the Senate anyway. The Communications Opportunity, Promotion and Enhancement (COPE) Act of 2006 (HR 5252) contained neutrality provisions, which were stripped out before the bill ultimately died, as did the Internet Non-Discrimination Act of 2006 (S 2360) and the Internet Freedom and Nondiscrimination Act of 2006 (HR 5417). The Network Neutrality Act of 2006 (HR 5273) was defeated in committee. The Internet Freedom Preservation Act of 2008 (HR 5353), which would enforce the principles of the FCC's AT&T–BellSouth merger deal on all broadband providers, is now pending, as are some older bills that have been reintroduced.

As with the neutrality debate in general, there are divisions over policy within the federal government. While Congress and perhaps the FCC seem to be moving toward increased government regulation, the Federal Trade Commission (FTC) has opposed new regulation. As far back as 2002 the FTC noted the rapidly evolving nature of the high-speed Internet service market and argued that "broadband services should exist in a minimal regulatory environment that promotes investment and innovation in a competitive market." More recently, a 2007 FTC report reiterated its position and asserted that since no "significant market failure or demonstrated consumer harm from conduct by broadband providers" could be found, net-neutrality regulations "may well have adverse effects on consumer welfare, despite the good intentions of their proponents."

The FTC's conclusion is critical because one of the main justifications of net-neutrality laws is to prevent harm to consumers. That no harm has been found has led neutrality critics to dub the notion a "solution in search of a problem."

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To date, only a couple of cases of what could be called net-neutrality incidents have occurred. Madison River Communications blocked a web-based application when it prevented customers from using Vonage's VoIP service. The FCC stepped in and ordered Madison River to stop the blocking and make a $15,000 payment to the federal government. In another case, America Online was accused of blocking e-mail to the website dearAOL.com, which was established to protest an AOL plan to charge users a higher price for a feature to block e-mail from unauthorized senders. AOL maintained that the blocking was unintentional and assured that access was restored after customers complained. No government involvement was necessary. Finally, there was an allegation that Comcast was blocking Internet traffic to certain peer-to-peer (file-sharing) websites that were consuming large amounts of bandwidth, but it was later revealed that Comcast was merely slowing down certain peer-to-peer uploads by reducing the number of simultaneous connections that users could have to the site.

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Net-neutrality proponents contend that they want to use regulation to increase competition and innovation, but their remedies would have the opposite effect. The growth in demand for bandwidth-intensive applications, such as streaming video, multi-player online gaming, and telemedicine, will require vast capital investments. Broadband providers will not invest in such projects, however, if there is not a good chance they will be able to recoup their costs and turn a profit. This is not unlike how cable companies currently rely on richer customers paying for premium services so that they can invest in less-profitable ventures, such as providing infrastructure for services to rural areas. As Randolf J. May, president of the Free State Foundation, explained in testimony before the New York City Committee on Technology in Government on a proposed net-neutrality resolution,

> If broadband providers are not allowed to differentiate their services because of regulatory straightjackets, their ability to compete in the marketplace will be compromised. Lacking the flexibility to find innovative new ways to respond to customer demand, they will lack incentives to invest in new network facilities and improve applications. This lack of new investment, in turn, will have the perverse effect of dampening competition among existing and potential broadband operators.

Net-neutrality advocates also tend to underestimate the amount of competition that already exists in the market for high-speed Internet services. There are multiple companies providing these services using multiple technologies, including wireline, cable, terrestrial wireless, and satellite. Wireless broadband services, in particular, have come to provide a strong source of competition. Recent FCC data show that wireless has gone from having no subscribers in the beginning of 2005 to 35 million subscribers and a 35 percent share of the market for high-speed lines by June 2007. Moreover, as of June 2006 there were two or more broadband providers in 92 percent of the nation's zip codes, and four or more providers in 87 percent of the nation's zip codes. With all of this competition, it simply would not be in the companies' interests to degrade services to consumers because doing so would cause them to lose business to their more innovative rivals.

The costs of stifling competition and innovation through net-neutrality regulations would be significant. A May 2007 American Consumer Institute study estimated that regulation would cost consumers $69 billion over ten years. According to study author Stephen Pociask, "Despite proponents' best intentions, net neutrality proposals would be a twofold problem for consumers. Innovations that require a guaranteed level of service won't come to market, and consumers would have to pay more for the services they receive."

Net-neutrality proponents contend that they want to use regulation to increase competition and innovation, but their remedies would have the opposite effect.

The Usefulness of Price Discrimination

Price discrimination is another concern of neutrality advocates. Despite the negative connotation associated with the word "discrimination," price discrimination is a common and efficient way of allocating scarce resources and satisfying consumer demand. Children and seniors get discounted ticket prices at movie theaters; people pay different prices for different seats at concerts and sporting events; and some toll roads charge different prices depending on the time of day and the resulting levels of traffic congestion. In response to an FCC Notice of Inquiry regarding broadband practices, the Department of Justice's Antitrust Division (of all things!) heralded the value of price discrimination in a September 2007 statement, noting the example of the U.S. Postal Service: "The U.S. Postal Service, for example, allows consumers to send packages with a variety of different delivery guarantees and speeds, from bulk mail to overnight delivery. These differentiated services respond to market demand and expand consumer choice." The Department concluded, "Whether or not the same type of differentiated

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products and services will develop on the Internet should be determined by market forces, not regulatory intervention."

In other words, the government should simply get out of the way and allow the market to work. Government should not try to pick winners and losers.

When neutrality proponents say that people have a right to "neutral" provision of information over the Internet, they are really saying that the public has some sort of right over the private property of the companies that provide the access to that information. Some have tried to justify this argument by claiming that the Internet was designed to be neutral, but it is the freedom from government restrictions that has encouraged innovation and allowed the Internet to flourish. Or as my Reason Foundation colleague Steven Titch has put it,

> The legislated mandate for neutrality . . . is based on the supposition that neutrality was a founding doctrine of the Internet. That couldn't be more wrong. The Internet and its commercial component, the World Wide Web, are what they are today due to the simple principle of free exchange through voluntary agreement. Engineering concepts such as "network neutrality" or meaningless slogans like "information should be free" had nothing to do with it.

It is the freedom from government restrictions that has encouraged innovation and allowed the Internet to flourish.

Broadband providers have invested large sums of money in their networks and should be free to manage them as they see fit. Customers who feel their needs are not being met are free to switch to other providers. This freedom of contract and voluntary exchange are the cornerstones of a free-market economy. Supporters of net neutrality fear that without regulation, a relatively small number of companies will become the "gatekeepers" of the Internet, but the alternative is far worse: a monopolistic government gatekeeper whose incentives are to cater to political power, not consumer desires.

In addition to violating free-market ideals, net neutrality might also violate constitutional rights, specifically, the Takings Clause of the Fifth Amendment. As the Free State Foundation's May explains,

> [T]he *de facto* imposition of common carrier regulation through net neutrality mandates raises serious Fifth Amendment property rights issues under the Takings Clause. This is because the mandate to carry traffic that ISPs might otherwise choose not to carry, or to carry traffic at faster speeds than the service providers otherwise might prefer, or to refrain from charging more to those who impose greater capacity demands, is not costless. . . . Government mandates that impose such costs, but which, at the same time, restrict ISPs' freedom to recover such costs, implicate the ISP's property rights.

Net neutrality also brings up First Amendment concerns on both sides of the debate. Some grassroots groups, such as the Christian Coalition and Gun Owners of America, fear that broadband providers might someday decide to block access to their web content for ideological reasons. This, they argue, would constitute a violation of their free-speech rights.

This analysis is erroneous for a couple of reasons. First, the Constitution prohibits the *government* from restricting one's speech, not other private parties. As Brian Costin of the Heartland Institute writes, "[F]ree speech rights for an individual or group end where another's property rights begin." Second, a government regulation such as net neutrality that forced a private party to provide access to forms of speech with which it disagrees would violate the free-speech rights of the *broadband provider*. As noted previously, ISPs have an economic incentive *not* to block access to content, but they would be within their rights to do so if they saw fit.

The Right Tool for the Job

While network-neutrality advocates claim to want to ensure fairness and competition, the govern-

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ment regulation they propose will result in anything but those things. In the free market, competition ensures that customers receive the services they demand. Government control, by contrast, ensures that they receive whatever services the politicians and bureaucrats in power at the time deem appropriate (not to mention the inevitable and endless litigation about who could offer what services when and for how much).

The concept of the "tiered" Internet is not something to be feared. On the contrary, it could be a means of enhancing services to broadband customers, providing revenue for ISPs to invest in accommodating increasing demand for bandwidth-intensive and delay-sensitive applications and making further improvements to data delivery, and of increasing fairness by ensuring that content providers responsible for the most Internet congestion pay the higher costs of assuring a high quality of service for Internet users. Choking off this potential revenue stream through net-neutrality mandates will only ensure that instead of an Internet with regular lanes and "fast lanes," all consumers will be stuck in the slow lane.

"At age 57, I ran away from Home"

Writer Jim Payne (*The Culture of Spending, Overcoming Welfare*, etc.) follows the waterways of America, living a Tom Sawyer life, getting scared, soaked, and bailed out of trouble by Samaritans he discovers along the way. His escapades span the country, from the Hudson River to the Columbia, from the Mississippi to the Florida Keys.

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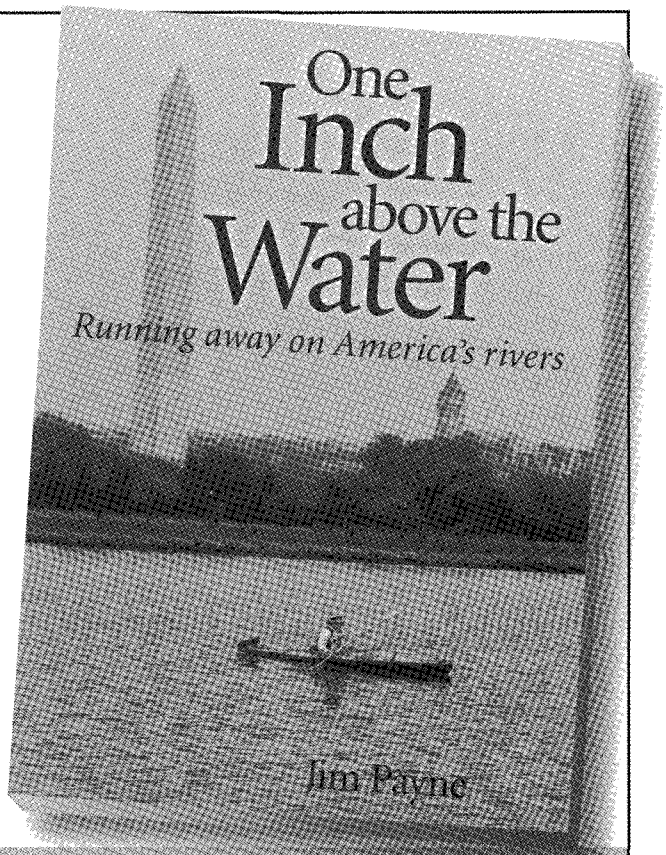

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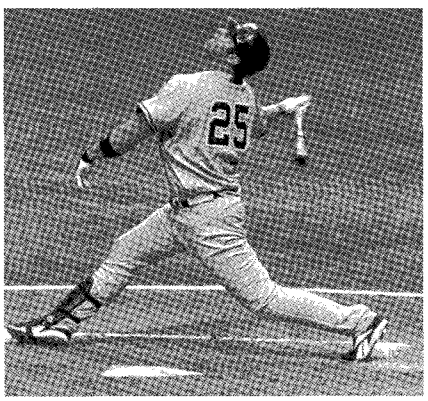
On Baseball and Capital Markets

BY DONALD F. GRUNEWALD

Baseball is a game of rules. These rules are not excessively complex for the simple reason that overregulation and overspecification would hamper the enjoyment of the game. How so?

Consider the placement of the defensive players. Other than the pitcher and catcher, who must stand at particular locations while a pitch is delivered, the other seven players need only stand in fair territory out of reach of the batter. The seven players could stand in a straight line in dead center field. They could form a circle and hold hands behind the pitcher's mound. They could lie down, kneel, sit, turn backwards, or even jump around in a circle. The rules dictate no precise location.



Jason Giambi
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Fans know that players do play positions. Furthermore, these players tend to stand in similar locations across all the major league teams and games. The reason is clear. Since team owners, managers, and players want to win games, defensive positions are set to maximize the chance of getting outs. The experience of many recorded games as well as the natural contours of the field suggest optimal positioning. That is why in baseball—from Little League all the way up to the majors, from New England to Florida, California, Latin America, and Japan—someone called a shortstop plays in the infield between second base and the third baseman.

It is important to note that while an equilibrium has been created for normal situations, managers have responded to extraordinary events by shifting their defensive spreads. Sometimes the alignments can be very unusual. Take Jason Giambi of the New York Yankees. Analysis of flow charts of balls hit by left-batting Giambi over his career show that he has a decided tendency to hit almost all his ground balls to the right side of the infield. In a normal defensive formation these grounders often result in hits, as the balls enter the gap between the first and second basemen and roll into the outfield. To prevent this, most teams move the shortstop near to where the second baseman normally plays, allowing the second baseman to stand in shallow right field to fill the gap. The third baseman must defend the entire left side of the infield.

Consider another situation. It's the bottom of the ninth inning and the teams are tied with none out and a runner on third. Normally a team places its three outfielders equidistantly on the outfield grass. Yet in this situation, many teams might drop to two outfielders who will play shallow and move the third into the infield. This is because a shot deep to the outfield will result in a run even if caught because the runner on third will tag up. So it's far more important to make sure no ground ball gets through the infield and that an infielder can quickly get to any ground ball and throw the runner on third out at home if necessary.

These nonstandard formations occur because in these extraordinary circumstances the old equilibriums no longer are the most efficient means of getting outs. Like the market responding to changing conditions,

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managers create new types of out-producing efficiencies to match the situation. For the social theorist and the law giver this is an important process to take note of. The rule maker in baseball presumably wishes to design the rules to make the game as interesting to fans as possible. This is because he wants to make fans happy, wants to earn profits, or wants prestige, all of which hinge on how interesting the game is. Baseball is more interesting when teams try harder to win, the score is close, and the players can demonstrate the maximum level of skill. Thus the baseball rule maker should want to encourage a system in which a defense can position itself to get the most outs. He must resist the temptation to overregulate.

Although baseball's rules evolved, someone later might have specified exactly where each player stands. At first glance this might seem to be a good idea because the rule maker could methodically study the game and direct all players to stand where they should be able to optimize their chances of victory. Yet such rules would neglect the unforeseeable extraordinary circumstances in which the usual equilibrium no longer is appropriate. The rule maker might then seek to regulate even more, adding exceptions to the shortstop placement rule, such as, "Except if Jason Giambi is batting with no men on base, then the shortstop shall stand at X location." The rules would become so incredibly complex that people would lose interest in the game. Imagine trying to explain it all to 7-year-old Little Leaguers.

It would be impossible to incorporate all the relevant information into a set of specific alignments. Consider our runner on third in the bottom of the ninth. In setting up the defense, a manager incorporates information such as how fast the runner is, whether he is injured, how strong the outfielders' throwing arms are, how good the catcher is at guarding home plate, what kind of batter is at the plate, whether the pitcher normally gets outs through strikeouts, grounders, or fly balls, whether the game is being played on artificial turf or grass, whether it is indoors or outdoors, whether it is day or night, whether the field is wet, and how cold it is. It simply would be impossible to craft a rule a priori that would optimize the defense. It is far better to give discretion to the managers of teams to set their defenses using the information they have right at the moment events are about to happen.

Rule Makers and Government Policy

The temptations that may afflict the baseball rule maker will also arise for governments that try to produce stable and efficient markets, economies, and societies. Consider an impartial and benevolent Leviathan empowered to regulate the capital markets. Presumably Leviathan would want to create a set of rules that would encourage the following outcomes: 1) business access to capital so that the economy can grow most efficiently and investors can get rich, 2) growth that is tempered so as to avoid wild swings or shocks, and 3) an absence of fraud. Leviathan may believe there is some optimal range of transactions that will maximize these goals. To ensure that this comes about, it might be tempted to make certain rules. Yet as we saw with defensive placements in baseball, this will make the market inefficient because of the sheer complexity of the rules that would result and because Leviathan simply cannot know everything that could possibly happen in the markets. If the ruler did know, he probably should stop making rules and invest full time.

Baseball teaches us a lot about rule making and market regulation. The game needs rules because otherwise it would cease to make sense. Few people would go to a stadium and pay money to watch people stand on a field and attempt to improvise a new game on the fly every day. Without balls, strikes, outs, hits, walks, and runs, baseball becomes pointless. Once basic rules are in place, however, we find that the participants tend to create the most interesting and efficient outcomes when no rules specifically guide or force them to act in particular ways. In fact, it is the absence of such rules that allows individuals to use their talents to best effect.

In the same way, we could not have a capital market without an evolved legal framework concerning property, contracts, fraud, currency, and so on. Yet the legal authority should not try to determine what people can and cannot invest in or what kind of financial instruments are appropriate. Baseball may only be a game, but games can be instructive all the same.

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Psychiatry Versus Liberty

BY THOMAS SZASZ

For millennia, slavery—involuntary servitude—was a universally accepted social institution. Today, psychiatric slavery—involuntary "treatment for mental illness"—is such an institution. Psychiatric incarceration and forced psychiatric treatment are integral parts of modern medical practice and social life.

The libertarian philosophy of freedom is based on the premise that self-ownership is a basic right and that initiating violence against others is a fundamental wrong. What is self-ownership if not the right to choose what, or how much of it, to ingest? What is initiating violence against another if not forcibly incarcerating him for ingesting too much or too little of a particular substance?

Consider, in this connection, a recent article in the prestigious British *Journal of Medical Ethics,* titled "Should We Force the Obese to Diet?" Extending the logic of perverted psychiatric "ethics" from anorexia nervosa to morbid obesity, the author concludes: "A person with anorexia can be detained under the Mental Health Act 1983 and forcibly fed. The obese cannot, so far, be forced to diet. The justification for this differential and possibly irrational distinction is unclear. . . . If the latter is competent, why should we assume the former is not? If it is right to force-feed an anorexic, why shouldn't it be right to force-diet the obese?"

From Status to Contract

Famed English jurist Sir Henry Sumner Maine (1822–1888) aptly observed: "The movement of the progressive societies has hitherto been a movement *from Status to Contract.*" In other words, in liberal (free) societies the law treats persons as contracting individuals, not as members of status groups. Modern psychiatry has declared war on this principle. Marcia Goin, M.D., a former president of the American Psychiatric Association, declares: "We can make contracts with builders, insurers, and car dealers, but not with patients." Builders, insurers, and car dealers make contracts with persons whom psychiatrists call "patients." Why can't psychiatrists make contracts with them? Because contracting implies two (or more) legally equal parties, each putting his cards on the table. It implies mutual obligations, each party having legal power to compel his partner to fulfill the contract or compensate him for failure to do so.

In liberal (free) societies the law treats persons as contracting individuals, not as members of status groups.

Such mutuality is contrary to psychiatric ethics. Psychiatrists reject the "base" ethics of commerce in favor of the "loftier" ethics of care. The seller of plumbing services is obligated to deliver only that which his customer has requested and he has agreed to provide. The seller of psychiatric services is obligated to deliver much more: he must protect the customer from himself, even at the cost of depriving him of liberty.

Civilized morality and the free market presuppose a commitment to valuing cooperation and contract more highly than coercion and control. Official psychiatry declares that ethically and legally proper practice requires the rejection of free contract in favor of "therapeutic" coercion. Daniel Luchins, M.D., a professor of psychiatry at the University of Chicago, states: "[E]mphasis on protecting negative liberties may be appropriate for a society of 18th-century country squires, but not for the seriously mentally ill in the United States." In other words, the

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psychiatrist who contracts with his patient—and fails to protect him, say, from eating too little (anorexia nervosa) or suicide (clinical depression)—deviates from the "standard of psychiatric care" (is derelict in his "duty to protect" and denies the patient his "right to treatment") and is presumed guilty of medical malpractice. This compels all psychiatrists to function as (potentially) coercive psychiatrists and makes noncoercive psychiatry an oxymoron.

Let us not forget that there is no objective test for mental illness, much less a test to measure the severity of this alleged illness. How, then, do psychiatrists know that a mental illness is "serious" enough to justify coercive detention and "treatment"? They know it ex post facto: if the patient injures or kills himself, then he is said to have had a "serious mental illness." The American Constitution prohibits ex post facto laws. The American Psychiatric Association and American mental-health laws espouse and rely on ex post facto determinations.

Does deprivation of liberty under psychiatric auspices constitute odious preventive detention or is it therapeutically justified hospitalization? Should forced psychiatric drugging be interpreted as assault and battery or medical treatment? Part of the answer to these troubling questions lies in clarifying the differences between the literal and the metaphorical meanings of the word "liberty."

Should forced psychiatric drugging be interpreted as assault and battery or medical treatment?

The Meanings of "Liberty"

The literal meaning of liberty is dyadic: freedom from external coercion. In this sense, liberty is an *interpersonal concept* entailing two or more persons. It is freedom from control by parent, policeman, or psychiatrist.

The metaphorical meaning of liberty is internal or monadic: freedom from "control" by our own passions. In this sense, liberty is an *intrapersonal concept* entailing only one person. It is freedom from our own unwanted impulses—freedom from lust, covetousness, envy, rage, hopelessness, "mental illness." It is, in short, freedom from "self-enslavement," liberty as self-control.

Philosophers and theologians have long distinguished between outer and inner freedom. Psychiatrists have appropriated this spiritual concept of freedom and founded a pseudomedical, "therapeutic" empire on it. The idea of insanity or mental illness entails the concept of unfreedom: the madman is "possessed" by "irresistible impulses" (formerly the devil, now a brain disease), is a "victim" of "mental illness," has lost his "criminal responsibility." Hence, he is properly a ward of the psychiatrist as agent of the state.

In everyday language we conflate and confuse these two radically different meanings of liberty, for example, when we say that for the adolescent, liberty is freedom from parents and teachers; for the prisoner, freedom from confinement; for the unhappy husband or wife, freedom from marriage; for the overburdened mother, freedom from children; for the sick person, freedom from illness; for the old person, freedom from having to live.

Libertarians discuss *ad nauseam* freedom from economic controls because they see themselves as among the controlled, and ignore the need for freedom from psychiatric controls because they do not see themselves as among the controlled. If they did, they would see psychiatry as Anton Chekhov ("Ward No. 6") saw it, through the eyes of the psychiatrist who realizes the enormity of what he has done to his "patients" only after he is himself locked up with them:

> [S]uddenly amid the chaos, the terrible, unendurable thought flashed clearly to his mind that these people who now looked like black shadows in the moonlight must have experienced the same pains for over twenty years, day after day. How could it happen that throughout over twenty years he had not known and had not wanted to know that? He had not known, he had no understanding of pain, meaning he was not guilty, yet his conscience, as intractable and hard as Nikita [the brutal attendant], made him grow cold from the top of his head to his heels. He jumped up, wanted to cry out with all his strength and run as fast as possible to kill Nikita, then Khobortov, the superintendent, and the orderly, and then himself, but not a sound came out of his chest.

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Government Workers Are America's New Elite

BY STEVEN GREENHUT

As a child, I would ask my mother on Mother's Day or Father's Day: "Why isn't there a Children's Day?" After she stopped laughing, Mom explained: "Every day is Children's Day." I didn't understand the joke then, but now that I'm the father of three children, her answer makes perfect sense.

I recalled that exchange recently after reading that government employees get an entire week dedicated to their "service." This year, "Public Service Recognition Week" ran from May 5 to 11, and state government workers got their own recognition day on May 7. The U.S. Senate and House of Representatives honored the occasion by passing proclamations commending the nation's noble public servants.

Special weeks or not, many of us have no special appreciation for government workers. The vast majority of them perform jobs that should either be eliminated or handled by the private sector (the *real* private sector, not "private" firms using taxpayer dollars). Besides, even workers who perform arguably legitimate tasks are well paid for their efforts. Roofers, car mechanics, taxi drivers, and journalists perform important services also, but one doesn't find entire weeks devoted to their heroics. Furthermore, government officials do not behave like noble doers of the public good. Instead, they are regular human beings who use their power and position to advance their own interests. That's to be expected, so why treat them like heroes?

Government officials do not behave like noble doers of the public good. Instead, they are regular human beings who use their power and position to advance their own interests.

But the best argument against honoring public "servants" is the one made by my mother in her concise rebuttal: *Isn't every day Public Employees' Day?*

A Public-Employee Smorgasbord

Thanks to craven politicians seeking government-union support, shameless exploitation by those unions of national tragedy (such as the death of firefighters in the World Trade Center collapse), and other factors, including the public's increasing embrace of big government, government workers have turned themselves into a coddled class that lives better than their private-sector counterparts and is exempt from many of the standards and laws that apply to the rest of us. Instead of offering accolades and honors, the public should be mad at the current situation and ought to question what it says about the nature of our society.

The *Orange County Register* published a front-page investigation in April about a special license-plate program for California government workers. The drivers of nearly 1 million cars and light trucks—out of a total statewide registration of 22 million—have their addresses shielded under a confidential records program.

"Vehicles with protected license plates can run through dozens of intersections controlled by red light cameras with impunity," according to the *Register*'s

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Jennifer Muir. "Parking citations issued to vehicles with protected plates are often dismissed because the process necessary to pierce the shield is too cumbersome. Some patrol officers let drivers with protected plates off with a warning because the plates signal that drivers are 'one of their own' or related to someone who is."

As I wrote in my newspaper column, "Readers have been shocked to learn that California has about 1 million citizens who are literally above the law. Members of this group . . . can drive their cars as fast as they choose. They can drink a six-pack of beer at a bar and then get behind the wheel and weave their way home. They can zoom in and out of traffic, run traffic lights, roll through stop signs and ignore school crossing zones. They can ride on toll roads for free, park in illegal spots and drive on High Occupancy Vehicle lanes even if they have no passengers in the car with them. Chances are they will never have to pay a fine or get a traffic citation."

Yes, rank has its privileges, and it's clear that government workers have a rank above the rest of us.

If officials who claim to be protecting the public's safety were told that one out of every 22 California drivers had a license to drive any way they choose, these officials would be demanding action and more power to protect Californians from the potential carnage. But until the newspaper series, we'd heard nothing about the situation from police officials and legislators. The reason, of course, is that the scofflaws are the police, their family members, and other government agents.

The special-license program started in 1978 with the seemingly unobjectionable purpose of protecting the personal addresses of officials who deal directly with criminals. Police argued that the bad guys could call the DMV and get home addresses. They could then go and harm the officers and their family members. There was no rash of such actions, only the possibility that this danger could take place.

So police and their families got their confidentiality, but then the program expanded from one set of government workers to another. So now parole officers, retired parking-enforcement employees, DMV workers, county supervisors, social workers, and many other categories of workers get the special protections. By the way, the protections are pointless now, given that the DMV long ago abandoned the practice of giving out personal information to the public. Yet the list of categories keeps growing and growing.

A few days after the newspaper investigation caused a buzz in Sacramento, legislators voted to expand the protections to even more classes of government workers. An Assembly committee, on a bipartisan 13–0 vote, agreed to extend the protections to veterinarians, firefighters, and code officers. One legislator justified the vote with a horrific story about code officials who were murdered after breaking up a dog-fighting ring. After the vote, the story was revealed as largely bogus, but just as government officials constantly parade their heroes in front of the public to secure more funding, so too do they tell tales of the grave dangers they face.

Rationalizations for Special Privileges

One Democratic Assembly member justified her support for the bill this way: "[T]his is a public safety issue. And there are lives of public workers, public safety officers, that are put on the line every day on our behalf that need to be protected." Said a Republican member of the committee: "I don't want to say no to the firefighters and veterinarians that are doing these things that need to be protected." Never mind that there is no longer any need for the protection and that the main purpose of the special plates is to protect government employees and their families from tickets and tolls while they drive in their personal vehicles on their personal time.

With the government employees' addresses kept confidential, toll-road operators, parking enforcement, and red-light-camera operators either cannot access them or don't go through the extra steps necessary to find the addresses. So the government employees often rack up thousands of dollars individually in unpaid fines or in tolls. This costs the quasi-private toll operators millions of dollars. Furthermore, when police spot these

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special plates or pull people over and look up the plates, they realize that the driver is special. They then extend what the police call "professional courtesy"—that is, they don't ticket other members of the brotherhood of government enforcers.

"It's a courtesy, law enforcement to law enforcement," said one police spokesman to the *Register*.

I have gotten calls from police whistleblowers alerting me to, for example, a local cop's spouse who allegedly was pulled over stone drunk, then given a courtesy ride home. Any average citizen pulled over for a DUI would end up in the county's notoriously abusive jail system for a day or more. Don't ever expect such "courtesy" for a mere citizen or taxpayer! This obviously is the type of thing more appropriate to an authoritarian or totalitarian society, where the rulers get to behave according to a different set of laws than the ruled.

In California, law enforcement gets its own "Peace Officers Bill of Rights," which offers a comprehensive list of special protections in case officers are accused of wrongdoing. Even the name of that law is offensive—the Bill of Rights is meant to protect the public from the government, but this one offers an added layer of protection from public accountability for the agents of government.

Being exempt from traffic laws is bad, but government workers are always pushing the envelope.

"More"

Being exempt from traffic laws is bad, but government workers are always pushing the envelope. It's like the union leader who was once asked, ultimately, what it was he wanted for his members. His answer: "More." That applies not only to salary and benefits but to special protections.

In April the California Assembly Public Safety Committee was set to consider—and most likely pass, with little apparent opposition—Assembly Bill 2819 by Mark DeSaulnier. The bill states, "No firefighters, EMT-I, EMT-II or EMT-P employed by the state or a local agency shall be subject to criminal prosecution for any legal act performed in the course and scope of his or her employment to carry out his or her professional responsibilities." The only way a firefighter could be prosecuted is if he or she committed an act "with demonstrable general criminal intent"—an extremely high standard for a prosecutor to meet. An earlier version of the legislation would have prevented firefighters from "civil or criminal liability unless the act was performed in bad faith or in a grossly negligent manner with demonstrable, willful criminal intent."

Despite the words "legal act," the clear result of the legislation would have been to protect firefighters from prosecution for gross negligence. If, say, a firefighter committed an intentionally illegal act such as murder or theft, he would still be subject to prosecution. But if he was involved in otherwise legal behavior, such as driving, but acted in a grossly negligent way when doing so, he would be exempt from prosecution. This goes far beyond the current civil protections for "good faith" mistakes a firefighter or paramedic might make in the line of duty.

The impetus for the legislation was a controversial prosecution by a district attorney against a firefighter who killed someone because he was driving a fire truck allegedly in violation of department standards. Even though prosecutors are loath to file charges against firefighters, the firefighter unions grabbed onto this one incident as a means to gain blanket immunity for their members, even for outright misbehavior. One Assembly member told me that if the legislation became law, a firefighter or paramedic would be protected from any civil or criminal claim even if he showed up at an accident, saw someone in severe distress, but decided to get a hamburger instead of doing his job.

As the *Register* opined at the time: "The Assembly Public Safety Committee today is considering one of the most noxious, special-interest pieces of legislation we've seen in a while—one that will endanger public safety, tread on the California constitution and reinforce the perception that some government workers are part of a special, coddled group that's exempt from the normal legal and ethical standards that are applied to other Californians."

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The constitutional problem: The legislature cannot dictate to the executive branch who it can and cannot prosecute. This legislation was first introduced for firefighters, but before long police, animal-control officers, and others would be demanding the same protection. The bill was pulled from the calendar at the last minute due mostly to the bad publicity the editorial generated, but it will surely be back again. Government workers and their unions are quite shameless about pushing their self-interest.

There was a time when government work offered lower salaries than comparable jobs in the private sector, but more security and somewhat better benefits. These days, government workers fare better than private-sector workers in almost every area—pay, benefits, time off, and security.

"Today, government employees in the vast majority of job classifications earn considerably more than those in the private sector doing similar work," wrote Jon Coupal of the Howard Jarvis Taxpayers Association and Richard Rider of the San Diego Tax Fighters in a recent column in the *California Republic*. "They have even better job security than before and they enjoy many far superior benefits—including a pension which can exceed the salary they earned while working."

The *Asbury Park Press* in New Jersey reported recently that "Federal workers, on average, are paid almost 50 percent more than employees in the private sector." The reason, according to a Heritage Foundation legal analyst quoted in the article: "The government doesn't have to worry about going bankrupt, and there isn't much competition."

One result is the huge public liability created by government pension and retiree health-care plans. Elected officials are generous in granting expanded benefits to government employees. They buy labor peace and political support, letting future legislatures, councils, and taxpayers deal with the growing debt. This is no minor problem. "The funds that pay pension and health benefits to police officers, teachers and millions of other public employees across the country are facing a shortfall that could soon run into trillions of dollars," the *Washington Post* reported in May. "But the accounting techniques used by state and local governments to balance their pension books disguise the extent of the crisis facing these retirees and the taxpayers who may ultimately be called on to pay the freight."

The second part of that quotation is harrowing. The unions and government agencies have cleverly hidden the extent of the deficit. But courts have ruled that the promises made by elected officials to government unions are ironclad contracts that must be kept. That leaves the nation's taxpayers stuck footing the bill. Even as private-sector workers must toil longer to shore up their eroding retirement funds, so too must they work extra to make good on the unsustainable promises elected officials have made to government workers. Only the best for our rulers!

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Institutionalizing Perverse Incentives

It's easy to understand why the pension deficit continues to grow. In California, for instance, public-safety employees—police, fire, prison guards, and an expanding number of law-enforcement categories—receive "3 percent at 50" retirements. That means at age 50 they are eligible for 3 percent of their final year's pay times the number of years worked. So if a police officer starts working at age 20, he can retire at 50 with 90 percent of his final salary until he dies, and then his spouse receives half that for the rest of her life. The taxpayer typically makes the complete retirement contribution throughout the officer's years of work. Many police—more than half in some agencies—claim an injury (such as back pain or bad knees) a year before their retirement age, which not only gives them a year off for disability, but protects half their retirement from taxes.

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Police and firefighters are legally presumed to have a work-related illness when they get common ailments such as heart attacks or cancer. The bottom line: Public-safety officials have many ways to gin up their already generous retirements benefits to astronomical levels. Most garden-variety government employees get lucrative pensions also. It is common for them to retire at age 55 with more than 80 percent of their final year's pay. Most public employees receive defined-benefit retirement plans, in which the taxpayer promises a set rate of return, as opposed to private-sector workers who have 401(k)'s and other defined-contribution plans in which the market sets the return.

The Trouble with Vallejo

This situation is bringing trouble. Vallejo, a city of 120,000 in the San Francisco Bay area, declared bankruptcy because tax revenues remained relatively static while public-employee salaries continued to grow out of control. Police and fire budgets consume three-quarters of the city's budget, leading to the zeroing out of other government programs (libraries, museums, senior-citizen centers). Despite the enormous spending on public safety, city officials have warned citizens to be judicious in their use of 911. When government overspends, the public has to suffer.

The *San Francisco Chronicle* reported that the base salary of firefighters in Vallejo is $80,000 a year, that 21 firefighters earn more than $200,000, and that 77 of them earn more than $170,000. The *Chronicle* also reported that these excessively paid folks have been spending their time "going abalone diving, grilling tri-tip and drinking cocktails on the public's dime." The city manager, by the way, earns a total compensation package of $400,000 a year. The downtown is decrepit, in large part because the city has no money to spend on infrastructure.

Even with bankruptcy, it's uncertain whether Vallejo can get out from under the outrageous union contracts that are turning it into a Third World city—one that comes complete with an arrogant and corrupt aristocracy that doesn't care about the public.

Even worse than the fiscal mess is the kind of society we're creating. It's one where the government elite get special pay, special benefits, special privileges, and special exemptions from the law, and where the rest of us have to play by the rules and work extra hard to pay for these excesses. And yet so many people believe the private sector is the problem! Go figure.

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Big Brother Is Watching as He's Never Watched Before

BY BECKY AKERS

The Transportation Security Administration (TSA) has installed millimeter-wave scanners at checkpoints in about a dozen airports nationwide. It's threatening to inflict these gizmos on every commercial concourse in the country.

Millimeter waves bombard passengers with beams that penetrate clothing to show the body beneath. Victims don't undress: the rays do it for them so screeners can find the weapons so many of us tape to our torsos. Never mind that no TSA employee anywhere has discovered a single terrorist, despite wandings, pat-downs, and the agency's foot fetish. Passengers may now have to perform a virtual strip tease, too.

Currently, the agency subjects only folks "selected" for "secondary screening" to a millimeter-wave scan, and then it offers Leviathan's version of a choice: They can be groped by a screener in the traditional pat-down or they can pose for pictures that might earn them big bucks from *Playboy*. The TSA claims that 90 percent of passengers prefer a millimeter-wave scan over a pat-down, but perhaps that's due to the agency's bland description: "Millimeter wave detects weapons, explosives and other threat items concealed under layers of clothing without any physical contact. It is a promising alternative to the physical pat-down." No wonder Peter Bibring of the American Civil Liberties Union (ACLU) says, "I don't think people are really aware of just how accurate and detailed the images are of their naked body."

The agency claims our faces will be blurred, as if that somehow excuses stripping us of both our clothing and our constitutional freedom.

Big Plans

The TSA hopes to eventually scan everyone boarding a plane, not just those unlucky passengers who lose the pat-down lottery. In fact, the agency's been trying to dose us with millimeter waves and a sister technology, backscatter X-rays, for its entire six years of existence. Public outrage kept it dithering like a dirty old man awaiting the right moment to pounce: the "strikingly graphic images . . . reveal not only our private body parts, but also intimate medical details like colostomy bags," the ACLU warns. "That degree of examination amounts to a significant assault on the essential dignity of passengers that citizens in a free nation should not have to tolerate.

To lull such prudes, the TSA promises to "remotely locate" the monitors revealing our nakedness so that the screeners leering at them can't see us in person. They supposedly can't save the images, either. And the agency claims our faces will be blurred, as if that somehow excuses stripping us of both our clothing and our constitutional freedom.

But TSA might as well stand for "Truth Seldom Appears." Screeners at checkpoints and monitors can communicate; only TSA honchos pretend they'll be saying, "No weapons detected on this suspect, Howie," instead of, "Whoa! What a bod! Get her name off her ticket, will ya?"

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Alleging that the machines can't save images is just as preposterous. Initially the TSA insisted the contraptions "have zero storage capability, so the images cannot be stored, transmitted or printed." But manufacturers' websites touted their products' "storage capability" (though the feature can be disabled). Ergo, TSA chief Kip Hawley now asserts that our naughty pictures "will never be stored, transmitted or printed, and [they] will be deleted immediately once viewed." But how can he guarantee that screeners won't figure out how to enable "Save"? Employees could also photograph their monitors unless the TSA searches them for cell phones and cameras. That isn't very likely: despite the agency's penchant for searching us, it has refused to so abuse screeners—even when passengers accuse them of stealing jewelry or cash. At Boston Logan one summer day in 2005, John Wright put his $7,000 diamond wedding ring, Rolex watch, and wallet in a plastic bin while he walked through the metal detector; only his Rolex and wallet were still in the bin a few moments later. He figured one of the three screeners manning the checkpoint swiped his ring because no one else other than his wife was around. But authorities declined to search the trio because, says TSA spokeswoman Ann Davis, "employees aren't searched if there's insufficient evidence to warrant it."

Despite the agency's penchant for searching us, it has refused to so abuse screeners—even when passengers accuse them of stealing jewelry or cash.

Passengers should be that lucky. Meanwhile, how will a bureaucracy that can't keep screeners from swiping our belongings stop them from exploiting us with this newest toy?

Privacy at Risk

Look for a brisk business in bootlegged pictures of celebrities or folks whose bodies intrigue in some way. Barry Steinhardt of the ACLU believes that "you're going to start seeing those images all over the Internet. These images are going to have high commercial value." They may have high vengeance values, too. An angry ex could post his former wife's image on a webpage, whether he works for the TSA or pays a friend who does to pirate the image.

At present, the agency pledges to choose passengers "randomly" for millimeter-wave scanning. But in 2004, screeners at Reagan National Airport in Washington, D.C., "randomly selected" passengers for pat-downs by kicking the magnetometers when attractive women walked through. They then forced these victims to strip for searches in stairwells. A horrified employee told ABC News, "That really incensed me that someone felt that they could just put on some gloves and they could just violate someone to that degree."

Tragically, the idea allowing these assaults—that passengers deprived of all weapons, and therefore of all self-defense against terrorists, are safe passengers—is merely an assumption. No research substantiates it. Ditto for checkpoints: three American researchers could find "no comprehensive studies that evaluated the effectiveness of X-ray screening of passengers or hand luggage, screening with metal detectors, or screening to detect explosives."

There may be less expensive, more efficient ways to secure planes, but no one knows because Congress unilaterally imposed a security system on aviation. The TSA is flying blind. It does what it does because it wants to, not because analysis shows that forcing passengers to pose for virtual nude photographs reduces the incidence of onboard weapons by, say, 58 percent.

The TSA's false dichotomy—that screeners must either molest us or see us naked—is as absurd as the agency itself. There's a third choice: abolish the TSA. That would free the airlines to protect their customers effectively—and inoffensively.

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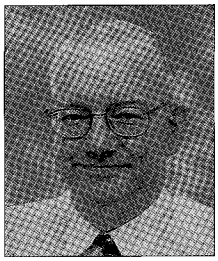

The Recurring Crisis

BY STEPHEN DAVIES

Recently the governor of the Bank of England announced that the "nice" times had come to an end. (In the Bank's lexicon, NICE = "Non-Inflationary Constant Expansion"). This news will not come as any shock to the many Americans who have had their homes repossessed recently, but it does appear to have startled many of the scribblers who make their living from the financial pages on my side of the Pond.

One of the two most striking features of the current financial contretemps is the way it has seemingly come as a complete surprise to most financial commentators and economists. (The other is the way that financiers and bankers who have spent the last few years presenting themselves as buccaneering entrepreneurs have suddenly discovered a fondness for taxpayer bailouts.)

One of the two most striking features of the current financial contretemps is the way it has seemingly come as a complete surprise to most financial commentators and economists.

As recently as a year ago, most commentators in the financial press were convinced there was no real prospect of a major correction to the real-estate market, much less a serious financial crisis. There were dissenting Jeremiahs who warned that things could not go on as they had been, but they were in the minority. (They included the most successful investor in America, Warren Buffett.)

With no sense of satisfaction I report that I was, in my own small way, one of the Jeremiahs. I did not foresee all that has happened—neither did anybody else—but the broad outline was clear. Why did the majority miss it? The answer is a combination of common sense and a historical perspective informed by a certain approach to economics.

Trends and the Popular Mind

The first is easy enough to explain. A recurring feature of the popular mind is the belief that whatever trend is dominant at the moment can only continue indefinitely. Thus if the prices of houses and other assets are rising and have been rising for some time, then they must continue to do so indefinitely into the future. Talented and intelligent people then come up with all sorts of elaborate explanations of why this must be so. These are little more than elaborate rationalizations of assumptions. The contrary, common-sense view was captured by the chairman of Richard Nixon's Council of Economic Advisers, Herbert Stein: "If something cannot go on forever, it will stop."

However, common-sense observations and instinct do not help us understand precisely what has happened to the U.S. financial system and economy over the last decade, or why it happened and why it has now come to a messy end. The thing to grasp is that this kind of phenomenon has happened before. The current "credit crunch" is only the most recent of several such financial crises going back to the mid-nineteenth century or even the 1820s. Besides the events of 1929–1932, there were severe financial crises ("panics") in 1873, 1893, and 1907. There was nearly a similar panic in 1997, and in many ways it is the response of the authorities to that year's events which produced the situation we face today.

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Although the details of the crises are distinctive, they all have something in common: they were the dramatic system-wide effects of manipulation of the money supply. The distinctive details are produced by the way monetary policy interacts with the most recent innovations in the financial markets.

Because of errors of public policy, the government's monopoly central bank increased the money supply above the underlying level of actual economic growth. This can lead to a general rise in money prices (inflation), but that is not inevitable. Frequently a rise in the amount of money needed to buy consumer goods is concealed by a rise in productive efficiency, which reduces production costs so much that money prices still decline. However, the rise in the supply of money and credit leads in all cases to a rise in the money prices of assets and investment goods, such as securities, stocks, land, real estate, and even such things as antiques and fine wine.

This sparks off a speculative spiral in which people invest in capital goods not because of the anticipated return or because of their utility (as in the case of houses), but because they expect the money value of the good to rise. To return to Herbert Stein, this cannot go on forever, and eventually the underlying expansion of the money supply that drives the whole process will stop. (In fact it doesn't have to actually stop; it is only necessary for the anticipated rate of increase to decline.)

The underlying active agency behind recurring crises of this kind is the government's money monopoly.

Problems Are Exacerbated by Monetary Disorder

At this point two things become apparent. One is that a lot of investments are unsound and will never justify themselves. The other is that many people are left holding assets that are worth less than what they paid for them. The result is a period of economic pain in which the malinvestment has to be liquidated.

Paradoxically, the speculative spiral, or bubble, is actually amplified by open and competitive investment markets and tends to be most pronounced in newly developing sectors or with regard to newly created investment vehicles (railroad stocks and bonds in 1893, derivatives in the current events). The problem is that the more efficient and open a market is, the better it will respond to market signals as expressed in prices. If those signals are systematically distorted by an underlying monetary disorder, the response will amplify that disorder. The more efficient the market, the greater that effect. Because this bubble tends to be most pronounced in areas that have seen financial innovation, each particular panic has an element that is novel and typically completely unforeseeable.

Looked at in this way and with the benefit of historical perspective, the events of the last decade become clear. In response to the crisis of 1997 (brought about in turn by the policies of governments in various parts of the world), the world's monetary authorities (above all, the Fed) expanded the money supply. This led to an asset bubble in shares, particularly those in cutting-edge hi-tech sectors. The bubble burst in 2001. The Fed, along with other central banks, then increased the supply of money and credit even further to avoid the painful reckoning. However, by trying to avert a recession in 2001–03 they precipitated an even-more-severe one now. The continued expansion simply led to another asset bubble, this time mainly in real estate, which has also burst. In this case the novel element is complex financial instruments based not on prices set by markets but rather elaborate mathematical models—which we now realize are useless precisely when you need them most: during a sudden shock.

A common response to these events is to blame the inherent qualities of financial markets. Certainly the response of people within those markets to adversity does not help their cause. However, the underlying active agency behind recurring crises of this kind is the government's money monopoly. As long as its policy errors can have large-scale disastrous consequences, three sentences should fill you with fear: "The price of X cannot fall"; "We have managed to get rid of the business cycle"; and "This time it's different."

It can. We have not. And it isn't.

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Torture and Liberty

BY JAMES BOVARD

Is torture compatible with liberty?

Unfortunately, this is no longer a hypothetical question. Many Americans who claim to support individual freedom also favor permitting the government to torture suspected terrorists or other purported enemies of the United States.

This controversy is reminiscent of a disagreement between the famous economists F. A. Hayek and John Maynard Keynes. Hayek's *Road to Serfdom* (1944) brilliantly restated the classical warnings on Leviathan, showing the similarities in trends between Nazi Germany and Western democracies. Keynes claimed that Hayek had gone too far in his criticism because "dangerous acts can be done safely in a community which thinks and feels rightly, which would be the way to hell if they were executed by those who think and feel wrongly."

Many Americans have embraced Keynes's assumption in the post-9/11 era. They have accepted that a democratic government should be permitted to unleash itself if the rulers promise to do good things. They have ignored or shrugged off the specific methods used because of their confidence that politicians "think and feel rightly."

President George W. Bush exploited this confidence by invoking American values in response to his critics. Shortly after the Abu Ghraib prison photos were published, Bush brushed aside a question about his personal responsibility by assuring a French interviewer that "America is a great and generous and decent country." After Amnesty International declared that the United States had become "a leading purveyor and practitioner" of torture, Bush sought to refute the charge by invoking American moral greatness: "The United States is a country that promotes freedom around the world." Much of the American media continued praising Bush as a visionary idealist long after the evidence of grave abuses had surfaced.

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Usurping Law

The Bush administration's invocation of freedom to justify its interrogation policies is premised on the assumption that the U.S. government could never be a threat to Americans' freedom. The Founding Fathers recognized that individual liberty depends on a "government of laws, not of men." Unfortunately, the Bush administration decided after 9/11 that the law could not be permitted to impede its war against terrorism.

Justice Department lawyers busied themselves creating legal pretexts for the President to scorn the federal Anti-Torture Act and the Geneva Conventions. A secret 2002 memo written by Justice Department official John Yoo proclaimed that "the President enjoys complete discretion in the exercise of his Commander-in-Chief authority and in conducting operations against hostile forces. . . . [W]e will not read a criminal statute as infringing on the President's ultimate authority in these areas." White

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House counsel Alberto Gonzales publicly declared that Bush had a "commander-in-chief override." Thus the statute book no longer applied to the nation's Supreme Leader.

Bush and his defenders continually portray the torture scandal as problems caused by a "few bad apples" or simply the equivalent of college-fraternity hazing. In reality, the abuses ranged from the endless high-volume repetition of a "Meow Mix" cat-food commercial at Guantanamo to tearing out toenails in Afghanistan to compulsory enemas for recalcitrant prisoners to beating people to death in Iraq and kicking them to death outside Kabul to illegally sending detainees to foreign governments to be tortured by proxy and creating a system of "ghost prisoners" worthy of a banana republic. U.S. torture has been confirmed by FBI agents, former U.S. military interrogators, a Department of Defense Inspector General report, and court cases around the globe.

Presidential Supremacy

Yale law professor Jack Balkin wrote, "The President has created a new regime in which he is a law unto himself on issues of prisoner interrogations. He decides whether he has violated the laws, and he decides whether to prosecute the people he in turn urges to break the law."

After 9/11 the CIA constructed an interrogation program by "consulting Egyptian and Saudi intelligence officials and copying Soviet interrogation methods," the *New York Times* noted last year. The United States had long condemned Soviet, Egyptian, and Saudi torture. But interrogation systems designed to compel victims to sign false confessions provided the model for protecting America in the new millennium. Torture regimes crafted to perpetuate repressive systems suddenly became engines of freedom—at least in the eyes of some Bush supporters.

The Justice Department produced a secret legal opinion in 2005 permitting CIA interrogators to use "combined effects" on detainees, including head slapping, simulated drownings ("waterboarding"), frigid temperatures, manacling people for many hours in stress positions, and blasting them with loud music to assure sleep deprivation. The *New York Times,* which published the leaked memo, labeled it an "expansive endorsement of the harshest interrogation techniques ever used by the Central Intelligence Agency." The memo signaled that the Bush administration explicitly rejected the definition of torture that had been used by the U.S. government for the previous century.

From the time when the first Abu Ghraib photographs were published, President Bush emphatically denied that the U.S. government ever used or approved of torture. But this past April, ABC News revealed that Vice President Dick Cheney and other top Bush administration officials would sit around a table in the White House and specify the precise extreme interrogation methods that would be used on Muslim detainees. ABC noted: "The high-level discussions about these 'enhanced interrogation techniques' were so detailed . . . some of the interrogation sessions were almost choreographed—down to the number of times CIA agents could use a specific tactic." Thus the number of times each prisoner could be whacked upside the head or almost drowned—or how many hours he could be shackled in a painful position—were decreed by the administration's top officials. Attorney General John Ashcroft, who was among the loudest apologists for Bush power grabs, warned, "History will not judge this kindly." Bush later confirmed that he was aware that his top officials were dictating exactly how brutal the interrogations would become.

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The torture scandal has made clear how little protection American laws provide to U.S. victims. Lawyers for four British citizens who had been locked up at Guantanamo from 2002 to 2004 sued U.S. officials, seeking damages for the illegal detention and torture they suffered. In January 2008 federal Judge Karen Henderson rejected their lawsuit, declaring that "torture is a foreseeable consequence of the military's detention of suspected enemy combatants." A federal

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appeals court ruled: "It was foreseeable that conduct that would ordinarily be indisputably 'seriously criminal' would be implemented by military officials responsible for detaining and interrogating suspected enemy combatants." The court ruled that the officials could not be sued because they were merely carrying out their official duties. The fact that they were following Bush's orders gave them legal immunity in American courts—a tacit revocation of the Nuremberg doctrines established in the war-crimes trials after World War II. Eric Lewis, the detainees' lawyer, lamented, "It is an awful day for the rule of law and common decency when a court finds that torture is all in a day's work for the secretary of defense and senior generals."

In recent years, the U.S. government has appropriated the title of the Supreme Defender of World Freedom, akin to the Catholic Church's role as the defender of the true faith in earlier centuries. During the Inquisition, torture was justified to rid the world of heresy. Bush, who promised to "rid the world of evil," perhaps feels justified in using torture to achieve his transcendent goal.

But this is where one of the problems arises. In the days after the 9/11 attacks, Bush talked about al Qaeda as the target of U.S. efforts. The target list soon expanded to include the Taliban, the Afghan rulers who had provided sanctuary to al Qaeda. Bush later added "radicals" and "extremists" to the list of enemies. Attorney General Gonzales declared in 2006 that it is "essential that we continue to develop the tools we need to investigate . . . and prosecute those who travel down the road of radicalization." There is nothing to constrain a politician from labeling his opponents "radicals"—as has happened repeatedly in American history.

There is nothing to constrain a politician from labeling his opponents "radicals" —as has happened repeatedly in American history.

Total Discretion in Labeling Enemies

Some people support torture because they are confident that the government will only barbarize foreigners. This was how Bush's power to designate enemy combatants was first sold to the public—as something that would only be applied to foreign perils. But after José Padilla was arrested in Chicago in 2002, his American citizenship did not save him from brutality while incarcerated in South Carolina and elsewhere in the United States. Once the government decrees that someone has no rights, it is a small step to declare that there will be no limits on how the government treats that person.

Some Americans support torture because of their distrust or hostility to Muslims, the usual target of contemporary extreme American interrogation methods. But the government claims the right to designate as enemy combatants (and thus eligible for torture) alleged members or supporters of any designated terrorist group. Irish Americans could be at risk of torture if the feds alleged they were linked to the Real Irish Republican Army, and Jews could face similar perils if the feds alleged their connection to the Sword of David or American Friends of the United Yeshiva Movement. Human Rights Watch warned in 2005 that the government's terrorist-group designation process has been "challenged in the courts for being vague, overbroad, and for there being no transparent criteria for listing entities on the lists or removing entities from the lists."

Torture supposedly saves lives by providing the surest way to get the evidence of a "ticking time bomb." There are no good verified examples of that from American experience. However, it was torture that produced "evidence" that spurred the American public to support Bush's rush to war against Iraq. The "smoking gun" linking al Qaeda to Saddam Hussein came from an al Qaeda operative captured in Afghanistan, Ibn al-Shaykh al-Libi. Secretary of State Colin Powell relied on al-Libi's information for his February 2003 presentation to the United Nations Security Council. However, Powell did not know that al-Libi had been tortured in Egypt—where he was "renditioned" by U.S. agents.

Had it not been for the torture of al-Libi, thousands of American soldiers might still be alive, and hundreds of thousands of Iraqis would not have perished in the 2003 invasion and the subsequent civil war.

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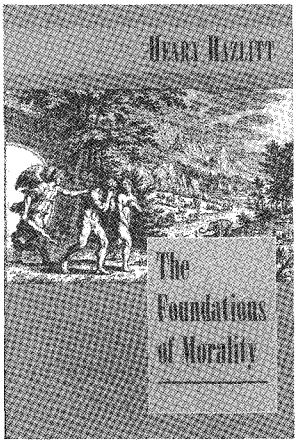
Torture is not a "bleeding heart" issue; instead, it is simply a question of whether a president will have absolute power. In reality, the Bush administration's torture policies are simply the most vivid example of its belief that the president is now permitted to do as he pleases. Assistant Attorney General Steven Bradbury declared in 2006: "Under the law of war, the president is always right." Bradbury also informed a closed congressional committee in 2006 that Bush has the authority on his own to order killings of suspected terrorists within the United States. Bradbury's assertion stirred zero controversy—despite the administration's long record of false accusations of terrorist connections. The vast majority of people charged in federal terrorist investigations have not been convicted on terrorism charges.

To Zealously Defend the Constitution

The genius of the Founding Fathers was to recognize that the existence of perils cannot justify absolute power. The Constitution was created by a generation of men who had fought a war against the most powerful government in the world. At the same time, it was also a civil war, thanks to the pervasive Tory sympathizers in many parts of the colonies. The Constitution was not made for sunny days and smooth sailing. Instead, it was crafted for hard times, with many provisions for dealing with deadly threats to the nation's survival. For a contemporary president to effectively claim that he can no longer be bound by the Constitution is an insult to the Founding Fathers who survived far harsher tests in their time than America did on and after 9/11.



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By Henry Hazlitt

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Libertarianism Through Thick and Thin

BY CHARLES JOHNSON

To what extent should libertarians concern themselves with social commitments, practices, projects, or movements that seek social outcomes beyond, or other than, the standard libertarian commitment to expanding the scope of freedom from government coercion?

Clearly, a consistent and principled libertarian cannot support efforts or beliefs that are *contrary* to libertarian principles—such as efforts to engineer social outcomes by means of government intervention. But if coercive laws have been taken off the table, then what should libertarians say about other religious, philosophical, social, or cultural commitments that pursue their ends through noncoercive means, such as targeted moral agitation, mass education, artistic or literary propaganda, charity, mutual aid, public praise, ridicule, social ostracism, targeted boycotts, social investing, slowdowns and strikes in a particular shop, general strikes, or other forms of solidarity and coordinated action? Which social movements should they oppose, which should they support, and toward which should they counsel indifference? And how do we tell the difference?

If coercive laws have been taken off the table, then what should libertarians say about other religious, philosophical, social, or cultural commitments that pursue their ends through noncoercive means?

In other words, should libertarianism be seen as a "thin" commitment, which can be happily joined to absolutely any set of values and projects, "so long as it is peaceful," or is it better to treat it as one strand among others in a "thick" bundle of intertwined social commitments? Such disputes are often intimately connected with other disputes concerning the specifics of libertarian rights theory or class analysis and the mechanisms of social power. To grasp what's at stake, it will be necessary to make the question more precise and to tease out the distinctions among some of the different possible relationships between libertarianism and "thicker" bundles of social, cultural, religious, or philosophical commitments, which might recommend integrating the two on some level or another.

The forms of "thickness" I am about to discuss should not be confused with two other kinds of commitments, one tightly and one loosely connected to libertarianism: those logically entailed by the philosophy itself (what I call "thickness in entailment"), such as opposition to private aggression, and those that relate simply to being a good person ("thickness in conjunction"), such as being a loving parent. As an example of the first category, it might be argued that libertarians ought to actively oppose certain traditional cultural practices that involve the systematic use of violence against peaceful people—such as East African customs of forcing clitoridectomy on unwilling girls or the American and European custom of judges and juries ignoring the facts and the law to acquit or reduce the sentence for men who murdered unfaithful wives or their lovers.

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Principled libertarianism logically entails criticism of these social and cultural practices for the same reason that it entails criticism of government intervention: because the nonaggression principle condemns *any* violence against individual rights to life, liberty, and property, regardless of *who* commits it, and not just forms that are officially practiced by government.

Between the tightest and the loosest possible connections, at least four other kinds of connections might exist between libertarianism and further social commitments, offering a number of important, but subtly distinct, avenues for thick libertarian analysis and criticism.

Thickness for Application

First, there might be some commitments that a libertarian can reject without formally *contradicting* the nonaggression principle, but which she cannot reject without *in fact* interfering with its proper application. Principles beyond libertarianism alone may be necessary for determining where my rights end and yours begin, or for stripping away conceptual blinders that prevent certain violations of liberty from being recognized as such.

Consider the way in which garden-variety political collectivism prevents many nonlibertarians from even recognizing taxation or legislation by a democratic government as being forms of coercion in the first place. (After all, didn't "we" consent to it?) Or, perhaps more controversially, think of the feminist criticism of the traditional division between the "private" and the "political" sphere, and of those who divide the spheres in such a way that pervasive, systemic violence and coercion *within* families turn out to be justified, or excused, or simply ignored as something "private" and therefore less than a serious form of violent oppression. If feminists are right about the way in which sexist political theories protect or excuse systematic violence against women, there is an important sense in which libertarians, *because they are libertarians*, should also be feminists. Importantly, the commitments that libertarians need to have here aren't *just* applications of general libertarian principle to a special case; the argument calls in resources *other than* the nonaggression principle to determine just where and how the principle is properly applied. Thus the thickness called for is thicker than logical entailment, but the cash value of the thick commitments is the *direct* contribution they make toward the complete application of the nonaggression principle.

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Thickness from Grounds

Second, libertarians have many different ideas about the theoretical foundation for the nonaggression principle—that is, about the best reasons for being a libertarian. But whatever general foundational beliefs a given libertarian has, those beliefs may have some logical implications other than libertarianism alone. Thus there may be cases in which certain beliefs or commitments could be rejected without contradicting the nonaggression principle *per se*, but could not be rejected without logically undermining the *deeper reasons* that justify the nonaggression principle. Although you could *consistently* accept libertarianism without accepting these commitments or beliefs, you could not do so *reasonably*: rejecting the commitments means rejecting the proper grounds for libertarianism.

Consider the conceptual reasons that libertarians have to oppose *authoritarianism*, not only as enforced by governments but also as expressed in culture, business, the family, and civil society. Social systems of status and authority include not only exercises of coercive power by the government, but also a knot of ideas, practices, and institutions based on deference to traditionally constituted authority. In politics these patterns of deference show up most clearly in the honorary titles, submissive etiquette, and unquestioning obedience traditionally expected by, and willingly extended to, heads of state,

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judges, police, and other visible representatives of government "law and order." Although these rituals and habits of obedience exist against the backdrop of statist coercion and intimidation, they are also often practiced voluntarily. Similar kinds of deference are often demanded from workers by bosses, or from children by parents or teachers. Submission to traditionally constituted authorities is reinforced not only through violence and threats, but also through art, humor, sermons, written history, journalism, child-rearing, and so on.

Although political coercion is the most distinctive expression of political inequality, you could—in principle—have a consistently authoritarian social order without any use of force. Even in a completely free society, everyone could, in principle, still voluntarily agree to bow and scrape and speak only when spoken to in the presence of the (mutually agreed-on) town chief, or unthinkingly agree to obey whatever restrictions and regulations he tells them to follow in their own business or personal lives, or agree to give him as much in voluntary "taxes" on their income or property as he might ask. So long as the expectation of submission and the demands for wealth to be rendered were backed up only by verbal harangues, cultural glorifications of the wise and virtuous authorities, social ostracism of "unruly" dissenters, and so on, these demands would violate no one's individual rights to liberty or property.

But while there's nothing logically inconsistent about a libertarian envisioning—or even championing—this sort of social order, it would certainly be *weird*. Noncoercive authoritarianism may be *consistent* with libertarian principles, but it is hard to *reasonably* reconcile the two. Whatever reasons you may have for rejecting the arrogant claims of power-hungry politicians and bureaucrats—say, for example, the Jeffersonian notion that all men and women are born equal in political authority and that no one has a natural right to rule or dominate other people's affairs—probably serve just as well for reasons to reject other kinds of authoritarian pretension, even if they are not expressed by means of coercive government action. While no one should be *forced* as a matter of policy to treat her fellows with the respect due to equals, or to cultivate independent thinking and contempt for the arrogance of power, libertarians certainly can—and should—*criticize* those who do not, and *exhort* our fellows not to rely on authoritarian social institutions, for much the same reasons that we have for endorsing libertarianism in the first place.

Strategic Thickness—the Causes of Liberty

Third, there also may be cases in which certain ideas, practices, or projects are entailed by neither the nonaggression principle nor the best reasons for it, and are not logically necessary for its correct application, either, but are *preconditions* for *implementing* the nonaggression principle in the real world. Although rejecting these ideas, practices, or projects would be *logically compatible* with libertarianism, their success might be important or even necessary for libertarianism to get much purchase in an existing statist society, or for a future free society to emerge from statism without widespread poverty or social conflict, or for a future free society to sustain itself against aggressive statist neighbors, the threat of civil war, or an internal collapse back into statism.

Libertarians have genuine reasons to be concerned about large inequalities of wealth or large numbers of people living in absolute poverty.

To the extent that other ideas, practices, or projects are preconditions for a flourishing free society, libertarians have strategic reasons to endorse them, even if they are conceptually independent of libertarian principles.

Thus, for example, left-libertarians such as Roderick Long have argued that libertarians have genuine reasons to be concerned about large inequalities of wealth or large numbers of people living in absolute poverty, and to support voluntary associations, such as mutual-aid societies and voluntary charity. Not because free market principles somehow logically mandate some particular socioeconomic outcome; and not merely because charity and widespread material well-being are worth pursuing for their own sake (which they may be). Rather,

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the point is that there may be a significant causal relationship between economic outcomes and the material prospects for sustaining a free society.

Even a totally free society in which large numbers of people are desperately poor is likely to be in great danger of collapsing into civil war. A totally free society in which a small class of tycoons owns 99 percent of the property and the vast majority of the population own almost nothing is unlikely to remain free for long if the tycoons should decide to use their wealth to purchase coercive legal privileges against the unpropertied majority—simply because they have a lot of resources to attack with and the majority hasn't got the material resources to defend themselves.

Now, to the extent that persistent, severe poverty, and large-scale inequalities of wealth are almost always the result of government intervention, it's unlikely that totally free societies would face such dire situations. Over time, many if not most of these problems would likely sort themselves out spontaneously through free-market processes, even without conscious anti-poverty activism.

But problems of poverty or economic inequality are still likely to be extremely pressing for societies like ours, which are not currently free, but which libertarians hope to help *become* free. Certainly in our unfree market there are widespread poverty and large-scale inequalities of wealth, most of it created by the heavy hand of government intervention in the form of direct subsidies and the creation of rigged or captive markets. Those who now enjoy the fruit of those privileges will continue to exercise some of the tremendous advantage they enjoy in material resources and political pull to pressure government into perpetuating or expanding the interventions from which they benefit. Since libertarians aim to abolish those interventions, it may well make good strategic sense for them to support voluntary, nongovernmental efforts that work to undermine or bypass consolidated political-economic power. Otherwise we will find ourselves trying to fight with slingshots while freedom's enemies fire back with bazookas.

Thickness from Consequences—The Effects of Liberty

Finally, there may be social practices or outcomes that libertarians should (in some sense) be committed to opposing, even though they are not themselves coercive, because 1) government coercion is a precondition for them and 2) there are *independent* reasons for regarding them as social evils. If aggression is morally illegitimate, then libertarians are entitled not only to condemn it, but also to condemn the destructive results that flow from it—even if those results are, in some important sense, external to the actual coercion.

If aggression is morally illegitimate, then libertarians are entitled not only to condemn it, but also to condemn the destructive results that flow from it—even if those results are, in some important sense, external to the actual coercion.

Thus, for example, left-libertarians such as Kevin Carson and Matt MacKenzie have argued forcefully for libertarian criticism of certain business practices—such as low-wage sweatshop labor—as *exploitative*. Throughout the twentieth century most libertarians rushed to the defense of such practices on the grounds that they result from market processes and are often the best economic options for extremely poor people in developing countries. The state-socialist solution of expansive government regulation of wages and conditions would, it is argued, distort the market, violate the rights of workers and bosses to freely negotiate the terms of labor, and harm the very workers that the regulators professed to help.

The problem with trying to use free market economic principles in the defense of such labor practices is that those practices arose in markets that are far from being free. In Carson's and MacKenzie's view, while twentieth-century libertarians were right to claim that existing modes of production should not be even *further* distorted by expanded government regimentation, too many believed that those modes would be the natural

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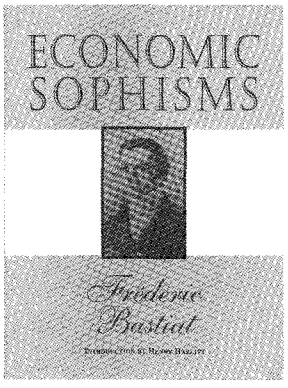
outcome of an *undistorted* market. Against these confusions, Carson and MacKenzie have revived an argument drawn from the tradition of nineteenth-century free-market individualist anarchists like Benjamin Tucker, who maintained that prevailing government privileges for business—monopoly, regulatory cartelization of banking, manipulation of the currency, legal restrictions and military violence against union strikers, politicized distribution of land to connected speculators and developers, and more—distorted markets in such a way as to systematically push workers into precarious and impoverishing economic arrangements and to force them, against the backdrop of the unfree market in land and capital, to make ends meet by entering a "free" job market on the bosses' terms.

On Tucker's view, as on Carson's and MacKenzie's, this sort of systemic concentration of wealth and "market" power can only persist as long as the government intervenes to sustain it. Free-market competition would free workers to better their own lives outside traditional corporate channels and would allow entrepreneurs to tear down top-heavy corporate behemoths through vigorous competition for land, labor, and capital.

Thus to the extent that sweatshop conditions and starvation wages are sustained, and alternative arrangements like workers' co-ops suppressed, through dramatic restrictions on property rights throughout the developing world—restrictions exploited by opportunistic corporations that often collaborate with authoritarian governments—libertarians, *as libertarians*, have good reasons to condemn the social evils that arise from these labor practices. Thus libertarians should support voluntary, state-free forms of solidarity—such as private "fair trade" certification, wildcat unionism, or mutual-aid societies—that work to undermine exploitative practices and build a new society within the shell of the old. There is every reason to believe that in a truly free market the conditions of ordinary laborers, even those who are very poor, would be quite different and much better.

I should make it clear, if it is not yet clear, that I have not attempted to provide a detailed justification for the specific claims I have made on behalf of "thick" commitments. Just which social and cultural projects libertarians, as libertarians, should incorporate into theory and practice remains to be hashed out in a detailed debate.



Economic Sophisms

By Frédéric Bastiat

Introduction by Henry Hazlitt

Although written 150 years ago, Bastiat's devastatingly accurate attacks on the illogical, self-serving arguments of protectionists remain both relevant and entertaining. Among the gems in *Sophisms* are "The Negative Railroad," "Petition of the Candlemakers," and "The Physiology of Plunder."

Perhaps the best recommendation for *Sophisms* comes from renowned journalist and FEE founding trustee Henry Hazlitt. In his introduction to the book, Hazlitt declares:

> *We could use more Bastiats today. We have, in fact, desperate need of them. But we do, thank Heaven, have Bastiat himself, . . . and the reader of these pages will not only still find them, as Cobden did, "as amusing as a novel," but astonishingly modern, for the sophisms he answers are still making their appearance, in the same form and almost in the same words, in nearly every issue of today's newspapers.*

Published by the Foundation for Economic Education — 328 pages, paperback

$11.00

To order, visit our online store at www.fee.org, or call 800-960-4FEE. Please add $3.00 per copy for standard postage and handling.

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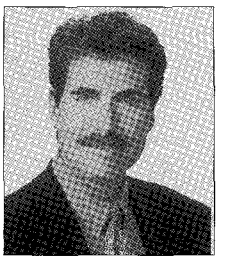

The Conceit of the Regulators

BY JOHN STOSSEL

Unless the government watches closely, the airlines will kill you.

That seems to be what many reporters and politicians believe.

"The result of inspection failures and enforcement failure [by the Federal Aviation Administration] has meant that aircraft have flown unsafe, un-airworthy and at risk of lives," says Representative James Oberstar, chairman of the House Transportation Committee.

"The FAA has clearly displayed a dangerous and cavalier lack of regard for tough safety enforcement," says Senator Hillary Clinton.

And Lou Dobbs of CNN wondered "whether airlines are putting profit ahead of passenger safety."

Let me get this straight. The only reason airlines care about safety is because of the FAA? So without government, multibillion-dollar companies would jeopardize millions of passengers by unsafely flying $50-million airplanes?

The media and politicians suggest that airlines would cut corners to make money, but how would that work exactly? Crashing airliners is a route to bankruptcy, not profits.

But air-travel safety has joined mortgage defaults and global warming as "crises" of the month.

Populists in politics and the media get attention by scaring people into thinking the skies are dangerous. The politicians want more power and attention; the clueless media are genuinely scared.

The latest "crisis" was launched when the FAA fined Southwest Airlines, which has an excellent safety record, $10.2 million for missing inspection deadlines. When Representative Oberstar criticized the FAA for being too close to the airlines, the agency sprung into overreaction. "An industry-wide 'audit' commenced, and FAA inspectors set about finding something—*anything*—to show Mr. Oberstar and other Congressional overseers that the agency was up to the job of enforcing federal maintenance requirements to the letter," said the *Wall Street Journal*.

One result was the cancellation of 3,300 American Airlines flights and the stranding of 250,000 passengers over several days while 300 MD–80s were grounded so their wiring could be inspected.

American Airlines then did something rare and even heroic. It criticized the agency that regulates it for suddenly changing inspection procedures in ways that have little to do with safety. "We don't know what the rules are," said an American technical crew chief for avionics. Some rules contradict each other, the airline said.

The FAA disputes American's claims, but *The New York Times* reports that "John Goglia, a maintenance expert and former member of the National Transportation Safety Board, said that the rules had, in fact, changed. . . . The differences in American's work, he said, were so small that 'those airplanes could have flown for the rest of their careers and those wires would not have been a problem.' "

What about alarmist claims that the FAA has been lax in enforcing its own procedures? If the claims are true, then where are the bodies? The best evidence that

John Stossel is co-anchor of ABC News' "20/20" and the author of Myths, Lies, and Downright Stupidity: Get Out the Shovel—Why Everything You Know is Wrong, *now in paperback.* *Copyright 2007 by JFS Productions, Inc. Distributed by Creators Syndicate, Inc.*

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FAA enforcement is unnecessary is to assume it's been lax—and then to note that airline travel, though busier than ever, has never been safer.

We need to rethink the premise that government inspections keep us safe.

Clifford Winston and Robert W. Crandall of the Brookings Institution write: "[T]he fundamental problem with most regulation is that the regulatory agency does not have sufficient information, flexibility and immunity from political pressure to regulate firms' behavior effectively. Fortunately, the market, and in some cases the liability system, provide sufficient incentives for firms to behave in a socially beneficial manner."

To see who really regulates air safety, do a thought experiment suggested by George Mason University economist and *Freeman* columnist Donald Boudreaux, who blogs at Cafe Hayek:

> Suppose that all government regulation of airlines were abolished today. Does . . . Congressman [Oberstar] suppose that airline executives would tomorrow fire all inspectors and maintenance crews, indifferent to the prospect of losing multimillion-dollar assets in fiery crashes? Does he not see that airlines with poor safety records would have difficulty attracting customers? Is he unaware that airlines' insurers have ample incentives to work closely with airlines at keeping air-travel safety at optimal levels? In short, is Mr. Oberstar really so dimwitted to think that airlines will be safe only if they are regulated by government?

Yes, I think he is.

And sadly, most of his colleagues, and mine, agree with him.

Coming in the September 2008

issue of THE FREEMAN
IDEAS ON LIBERTY

Eating Disorder: How Governments Raise Food Prices
by Arthur E. Foulkes

The "Risk" of Liberty: Criminal Law in the Welfare State
by Michael N. Giuliano

Dry-Cleaning Economics in One Lesson
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Why on Earth Do We Have a "Student Loan Crisis"?
by George Leef

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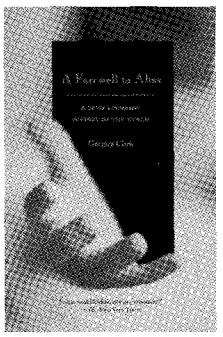
Book Reviews

A Farewell to Alms: A Brief Economic History of the World

by Gregory Clark
Princeton University Press • 2007 • 420 pages • $29.95

Reviewed by Gene Callahan



Economic historian Gregory Clark has written a fascinating book offering a serious challenge to the currently predominant explanation of why, beginning around 1800, "Western" societies have experienced a rate of economic growth never before seen in history. Clark supports his case with an impressive body of empirical evidence, making his challenge impossible to ignore.

Contemporary economists commonly propose that the West experienced its recent, unprecedented growth because there alone people finally hit upon the "right" institutions to promote prosperity. Just why they did so has been attributed to various causes. Max Weber, for example, pointed to the Protestant exaltation of worldly success as the key factor.

However, Clark contends that the historical evidence does not support this thesis. To the contrary, as he illustrates with many instances, the conditions supposedly responsible for the unique phenomenon of the Industrial Revolution also were present in a number of other societies. For example, late-medieval and Renaissance England was characterized by tax rates hovering around 1 or 2 percent, negligible government budget deficits, secure property rights, little violent crime, extensive social mobility, and active markets in land and capital. But centuries passed before the surge in English productivity occurred. Clark argues that such cases demonstrate that the institutional explanation is unsatisfactory.

Instead, Clark claims that the Neolithic Revolution, when humans first adopted agriculture, meant that certain traits, which previously had been unimportant, became pro-survival. These included skill in the symbolic thinking, particularly literacy and numeracy, needed to follow increasingly complex transactions, the self-control to forgo some current consumption in favor of ensuring future success, a lowered preference for leisure over labor, and the reduced impulse to employ violence. Clark proposes that, over the millennia separating the Neolithic and Industrial Revolutions, the reproductive advantage yielded by such traits gradually made them commonplace in agricultural societies, transforming the character of their populations and finally producing modern "bourgeois" society.

Clark notes that his thesis doesn't mean that those humans who embraced agriculture were intellectually superior to those who did not. In fact, a medieval English peasant's productivity peaked around the age of 20, while a hunter from the Ache tribe of South America doesn't reach maximum productivity until 40, indicating that the hunter is mastering the more complex set of cognitive skills. Rather, a settled farming existence rewards forms of intelligence that are irrelevant to a hunter-gatherer, forms that are prerequisites for sustained economic growth. Groups that adopted agriculture did so under environmental pressures rendering hunting and gathering progressively inadequate sources of sustenance, certainly with no inkling that ten thousand years later their choice would make their descendants wealthy.

In fact, as Clark demonstrates with various measures, it wasn't until the nineteenth century that the members of technologically advanced societies achieved better living standards than "primitive" tribesmen. As the chief culprit responsible for this counterintuitive economic stagnation, he points to the "Malthusian trap" in which all of humanity, prior to 1800, was ensnared. In that condition, any advance in technology resulted, not in greater individual well-being, but only in population growth sufficient to negate the productivity gains, leaving incomes unchanged.

While Clark makes a compelling case for his thesis, there are a few places where I think he goes astray. For example, he shows that modern, high-growth economies operate under higher tax burdens and levels of governmental economic intervention than did their low-growth predecessors. He suggests that this finding contradicts the belief held by many economists that a minimally intrusive government is a major factor promoting prosperity. But I suspect that he may have put

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the cart before the horse: perhaps only prosperous societies can afford expansive government and would be even wealthier in its absence.

Clark also feels compelled to disparage historians whose research, unlike his, focuses on historical specifics, claiming that the "individual personalities and events, so beloved of narrative historians, do not matter [for an explanation of the Industrial Revolution]." That irrelevance is not, as he appears to be suggesting, a conclusion discovered in the course of his research, but is rather an inherent consequence of the methods he has adopted: if one's attention is fixed on searching for macro-level trends in data aggregates, then it's hardly surprising that the different details one has generalized away do not appear in one's results.

What does this thesis imply for attempts to spur Third World development? Clark argues that there is "no simple economic medicine" with which wealthy nations can "cure" poverty if modern growth arose from the long, gradual transformation of individuals' characters. The best, short-term prospect for the residents of the world's poorest countries is to allow them to immigrate into rich nations, where they can share in the benefits of that evolutionary process. The dismal results of decades of programs aimed at promoting Third World growth suggest that Clark has a point.

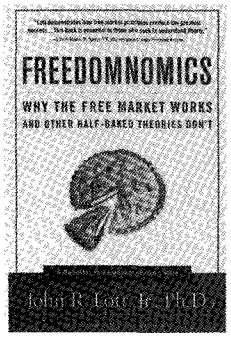
Gene Callahan (gcallah@mac.com) is the author of Economics for Real People.

Freedomnomics: Why the Free Market Works and Other Half-Baked Theories Don't

by John Lott

Regnery Publishing • 2007 • 275 pages • $27.95

Reviewed by Robert P. Murphy



Lately economists have been making it onto the bookshelves of Barnes & Noble with breezy volumes for the lay reader. The most striking example of this newfound hipness is Steven Levitt and Stephen Dubner's *Freakonomics*. John Lott's *Freedomnomics*, another example, is itself largely a response to that runaway bestseller.

In taking on some of Levitt and Dubner's glib dismissals of the free market, Lott doesn't disappoint. In my favorite duel, Lott quotes *Freakonomics*' rendition of the "problem of the lemons" in the used-car market. Because of asymmetric information, the authors casually claim that a new $20,000 car can't be resold for more than $15,000 (because people will assume it is defective) and that the owner of a lemon should just wait a year in order to fool buyers.

From the first time I heard this particular market-failure story in college, I thought it was wrong, but never bothered to follow my hunch. Fortunately, Lott isn't nearly as lazy. He asks the reader to imagine he has just bought a $20,000 car but needs to resell it immediately. Assuming the car is in perfect condition, is it really true that the owner needs to eat $5,000 due to imperfect markets? Lott transforms the problem: "Here is the real question: can you convince someone for, let's say, $4,000 that there is nothing wrong with your car? What about for $500? Could you hire the car's original manufacturer to inspect the car and certify that it's in brand new condition?"

Typical for Lott, he doesn't stop with these rhetorical musings. He did the research and found that for cars with only a few thousand miles, the "certified used car price was on average just 3 percent less than the new car MSRP [manufacturer's suggested retail price]," while cars that were a year old sold for 14 percent less than the new car MSRP. This directly contradicts the tale in *Freakonomics*, but accords entirely with common sense.

Like others of its genre, *Freedomnomics* is full of "Didja ever wonder why . . . ?" explanations. For example, one reason that lunch prices are lower than dinner prices is that diners linger over their meals longer at night, tying up the valuable table. Here's another: last-minute airline tickets aren't expensive just because "you have no options." Rather, the airlines are providing a service by holding some seats for last-minute travelers, and they need to be compensated for the chance that those tickets will go unsold. And do you want to know why the spread between self- and full-service gasoline gets smaller as the grade of gasoline improves? If so, you'll just have to buy Lott's book.

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I enjoyed *Freedomnomics* and can honestly say that I was sorry when it ended. Even so, I did have some serious misgivings, which I think many *Freeman* readers will share. In his efforts to debunk popular misconceptions about our "way of life," Lott goes beyond defending the free market. He defends the American political system too, making it sound as if anyone who criticizes U.S. politics must be a whiny leftist who hates McDonald's to boot. In a particularly inexplicable section, Lott argues that despite a few bad apples, "the vast majority of American politicians and businessmen" remain untainted by charges of corruption. This is because "there is a powerful incentive toward honest behavior that is built into our democratic political system and free market economy—that of maintaining a good reputation."

Now what's incredible is that Lott then goes through and explains *point by point* why the incentives for honest marketplace behavior *are not present* in the political sphere. (For example, a firm's good name can be sold, whereas a political record cannot.) When one also factors in items that Lott doesn't discuss—such as the lack of free entry into the political realm and the fact that 49 percent of the population can be forced to deal with a politician they despise as a liar—it is all the more mysterious why he didn't write a section explaining why politicians are more likely to be crooked than a businessperson in a free market.

My final objection is that Lott at times is blatantly partisan, seeming to overlook that Republicans have grown government quite nicely during George W. Bush's tenure. Space doesn't permit me to justify my charge of partisanship, but suffice it to say that at one point Lott declares, "Remarkably, it looks as if virtually all felons are Democrats." I promise that I'm not taking that out of context.

Despite its shortcomings, *Freedomnomics* is an enjoyable read for those who can't get enough economics books for the layperson. Libertarian readers will be put off by Lott's casual attitude toward certain aspects of government intervention, but they will learn much from the book to compensate.

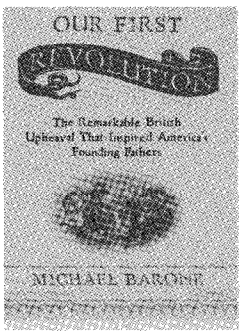
Robert Murphy (robert_p_murphy@yahoo.com) is senior fellow in Business and Economic Studies at Pacific Research Institute and author of The Politically Incorrect Guide to Capitalism.

Our First Revolution: The Remarkable British Upheaval that Inspired America's Founding Fathers

by Michael Barone

Crown/Three Rivers Press • 2007/2008 • 270 pages • $25.95, hardcover; $14.95, paperback

Reviewed by Martin Morse Wooster



In the mid-1980s Michael Barone, a columnist for *U.S. News and World Report* and a fellow at the American Enterprise Institute, decided he would write a history of American politics from 1930 to 1988. "Since I had never written a narrative book before," he writes, "I decided to read some of the great narrative history." He read Thomas Macaulay's multivolume *The History of England from the Accession of James II.*

Ever since then, Barone says, he's been interested in the Glorious Revolution, the struggle of 1688–89 that ended with the ousting of Britain's King James II and his replacement by the team of King William III and his wife, Queen Mary II. This revolution, he writes, was "a significant step forward for representative government, guaranteed liberties, global competition, and a foreign policy of overcoming hegemonic tyranny."

As Barone observes, when the Founding Fathers were rebelling against Britain, they modeled their complaints against the British Crown on those made in 1688. If we are to understand what the Founders were thinking when they made their enduring arguments for freedom, we need to know what happened during the Glorious Revolution. If you're interested in the history of liberty, you'll find Michael Barone a very good guide.

It should be noted that *Our First Revolution* is very much a book for Americans unfamiliar with British history. British readers will find that the book tills familiar fields. Readers who enjoy Barone's columns should know that he is as forceful and eloquent at longer lengths as he is in op-eds.

When King Charles II died of a stroke in 1685, his death provoked a political crisis in England. Charles's

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brother, James II, succeeded him. King James had converted to Catholicism. Britain was a Protestant nation, and the Church of England was (and is) the state church. Many foes of King James feared that his goal was to force Protestants out of the military and religious posts, and possibly to crush Protestants as ruthlessly as the kings of France had.

King James tried to loosen the connections between church and state to allow Catholics to become high-ranking military officers. He also made fitful attempts to reach out to Dissenters—Protestants who were not affiliated with the Church of England.

But King James, in Barone's view, wasn't a very smart man. He exploited ambiguities in the nature of Parliament at the time. Parliament existed and had some control over government spending during wartime. But it did not meet regularly, and British monarchs thought they had enough control over excise taxes that they could rule without Parliament.

King James intimated that he could try to rule without Parliament. He also tried to pack lightly populated rural election districts with enough pro-Catholic voters to ensure that Catholics were elected to Parliament,

Then in 1688 the court announced that King James's wife, Mary of Modena, was pregnant. If Queen Mary gave birth to a son, that Catholic child would have precedence to the throne over James's Protestant daughters, Mary and Anne. Protestants, fearing a permanent restoration of Catholic rule began what became known as the Glorious Revolution, in which James and his court fled for France, while James's daughter Mary and her husband, King William III of Holland, jointly ruled the throne.

King William was engaged in wars with France and needed Parliament's help to pay the bill. Moreover, the king wanted to ensure the legitimacy of his rule. So Parliament began to meet continuously. In 1689 William issued the Bill of Rights, which for the first time said that his subjects had rights—to worship as they pleased, to have a trial by jury without having the jury packed by the court, and not to have excessive bail placed on them if they were arrested. Protestants were allowed "arms for their defence suitable to their conditions and allowed by law." And the Crown had to get Parliamentary approval for *any* spending.

By doing this, Barone writes, King William ensured that Britain would have a representative government that would not be threatened by a monarch wishing to reach for absolute power. The king's legacy also reached to America. When the Framers were drafting the Constitution, the model they used for the Bill of Rights was the document King William had approved in 1689. Many of the protections in the American Bill of Rights—including the right to bear arms—were based on the bill King William signed a century before.

The Glorious Revolution is an unjustly neglected advance for freedom and liberty, and Americans should know more about it. Anyone interested in the history of liberty ought to read Michael Barone's excellent book.

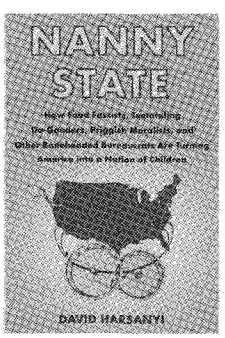
Martin Morse Wooster (mmwooster@yahoo.com), an author living in Silver Spring, Maryland, frequently reviews history.

Nanny State: How Food Fascists, Teetotaling Do-Gooders, Priggish Moralists, and Other Boneheaded Bureaucrats Are Turning America Into a Nation of Children

by David Harsanyi

Broadway Books • 2007 • 236 pages • $24.95

Reviewed by George Leef



Several years ago I drove a colleague to his house a little more than a mile from the office. While driving back over city streets at low speeds, I was stopped by a policeman. Why? Because I had neglected to buckle my seatbelt. For having ignored that nanny-state regulation, I was hit with a ticket.

Alas, the nanny state is not confined just to traffic enforcement in my town. It has spread across the whole of America, and almost every day some new mandate or prohibition is decreed. For example, Washington dictates that we must use only certain kinds of light bulbs and may not use the Internet for gambling; and officials in San Francisco demand that "pet guardians" (their approved term for pet owners) must have a tip-proof water dish for Fido and change the water at least once a day.

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In *Nanny State*, *Denver Post* reporter David Harsanyi surveys the numerous fronts on which America's elected officials are waging war against our freedom. He covers the crusades being waged against alcohol, tobacco, pornography, junk foods, and other things that some people like but others detest. "As you read this," he writes, "countless do-gooders across the nation are rolling up their sleeves to do the vital work of getting your life straightened out for you." *Freeman* readers all know about this malignant trend, but seeing the big picture is really frightening.

The idea that the government needs to treat us like children is everywhere. Republicans and Democrats both love the nanny-state concept, although they sometimes disagree on exactly where to apply it.

Many Republicans, especially of the social-conservative faction, demand nanny-state measures to save us from our own immorality, enthusiastically pursuing laws against gambling, drugs, and other real or imagined vices. Such initiatives are presumably of no interest to "liberal" Democrats, who instead demand that government control us so we'll be safer, healthier, and kinder to the planet. Unfortunately, Harsanyi points out, the different factions don't fight each other. Instead, they seem to have worked out a pact that says, "We won't try to block your do-gooderism if you won't try to block ours."

Unlike a real nanny or parent who just sends you to your room if you aren't good, the modern nanny state is prepared to use force against its disobedient children. Harsanyi relates some utterly jaw-dropping stories where the state arrives in SWAT gear and packing heat. When it comes to cracking down on Things That Are Bad, the nanny staters are happy to copy the tactics of Prohibition enforcers—armed raids in the middle of the night. Furthermore, police-state enforcement doesn't much trouble the Supreme Court, which found no constitutional problem in jailing a mother who had briefly and slowly driven her car with a child unbuckled.

Arresting a mother in front of her children is pretty disgusting, but Harsanyi has even worse tales to tell. In 1998 a SWAT team was sent along with officials who were intent on serving a warrant on a gambling operation. A security guard who thought the intruders were a criminal gang was fatally shot in the confusion. Just some "collateral damage" in the great war to rid America of vice.

Slowly but surely our freedom to live as we please is being erased by self-righteous crusaders who believe themselves entitled to use coercion to make us behave the way they know we should. Their crusades are a terrible menace to what's left of liberty in America.

My only quarrel with the book is Harsanyi's optimistic statement that our burgeoning nannyism "is anathema to the spirit of the American people." I'm afraid that such spirit was broken long ago. It was broken not by niggling annoyances like mandatory seatbelt usage, but by massive frontal assaults such as Social Security and compulsory school attendance. Once the authoritarians among us had established that they could get away with huge infringements on freedom, the Nanny State became a sure thing. People accustomed to the lash won't rebel at frequent spankings with a willow switch.

The sad fact is that most Americans have had the spirit of independence crushed out of them, thanks to government education and other sources of collectivist propaganda. Has any politician ever been voted out of office for his support of nannyism? I'm not aware of even one instance. I rest my pessimistic case.

Still, damp as the kindling may be, it is worth the effort to ignite the indignation at the continuing encroachments on our liberty.

George Leef (georgeleef@aol.com) is book review editor of The Freeman.

Correction: We regret that credit for the May 2008 *Freeman* cover photo was omitted. The photo, taken by Tom Ribaudo, was used with permission. He retains all rights to that image.

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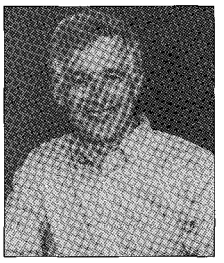

Freedom, Drugs, and the Workplace

BY DAVID R. HENDERSON

Imagine that you work for an employer whom you respect, and you like your job. Then you find out that your employer uses marijuana for a medical condition. On further inquiry, you learn that he uses it completely legally and, as far as you can tell, it doesn't affect his performance as an employer. Should you be allowed to quit your job?

I'm guessing you answered yes. I wouldn't even be surprised if you became incensed at my question. I can imagine some readers saying. "I should be able to quit even if it's just because my employer's eyes are blue."

I, too, think an employee should be able to quit for any reason. It might be unfair for him to quit and leave his employer in the lurch. It might be narrow-minded, even prejudiced, to quit just because the employer uses medical marijuana. But an employee has the right to be unfair: it's his life, and it's his to do what he wants with it as long as what he does is peaceful. Quitting a job is peaceful.

By defending a person's right to quit, I'm defending freedom of association. People should be free to associate with those who wish to associate with them. Employment is a form of association. If you oppose the right to quit, then you are supporting something akin to slavery. The essence of slavery is not that slaves don't get paid—many slaves were paid—but that they are not in "their" jobs voluntarily.

Simple symmetry and fair treatment demand that employers be free to associate, too. Therefore employers should be free to fire someone for whatever reason.

The most common argument against symmetrical treatment is that employers have more bargaining power than employees. The employer, according to this argument, has many potential choices of whom to hire, whereas the employee has fewer choices of where to work. Although this might often be true, there are many counterexamples. Imagine the loyal employee who has been with the firm 25 years and knows more about the firm's customers, products, and employees than even the firm's owners do. Such an employee could easily have more bargaining power than the employer. Should an employer in such a case be able to force the employee to keep working? I know of no one who believes that, which means bargaining power is irrelevant. Even when the employee has more bargaining power than the employer, the employee should be able to quit.

By defending a person's right to quit, I'm defending freedom of association. People should be free to associate with those who wish to associate with them.

Unfortunately, two organizations in the United States that generally lobby for freedom are hostile to freedom of association for employers. The two organizations are the Drug Policy Alliance (DPA) and the Marijuana Policy Project (MPP). The DPA's web site states: "DPA is the nation's leading organization working to end the war on drugs. We envision new drug policies based on science, compassion, health and human rights and a just society in which the fears, prejudices and punitive prohibitions of today are no more."

The MPP's web site advocates "[P]ublic policies that (1) allow for the responsible medical and non-medical use of marijuana, and (2) minimize the harms associated with marijuana consumption and the laws that manage its use."

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In short, both the DPA and the MPP favor more freedom to use drugs.

I have donated to both organizations to support their pro-freedom work and helped one of them decide whether to make a major grant for the study of marijuana use. But their recent attacks on the freedom of those who think differently from the way they and I think are disappointing. In January the California Supreme Court, in *Ross v. Ragingwire Telecommunications, Inc.*, found that an employer may fire an employee for a positive drug test even if the employee is using the drug legally. An article in *Drug Policy News*, January 25, 2008, quotes Daniel Abrahamson, the director of the DPA's Office of Legal Affairs, as follows: "We're disappointed that the Court's decision allows an employer to intrude into a doctor-patient relationship. It puts many patients in the difficult position of having to choose between their jobs and their doctor-recommended medical treatment."

Had I been the employer, I would not have fired the employee, Gary Ross. But that's not the issue. The issue is whether an employer has the *right* to fire an employee even if doing so is mistaken or prejudiced. Interestingly, Abrahamson didn't address the issue directly, but instead muddied the waters by raising the doctor-patient relationship. But Ragingwire didn't intrude on this relationship at all. It simply made clear that it did not want to hire someone who uses medical marijuana. If I refuse to work for an employer who uses medical marijuana, I don't interfere with his relationship with his doctor.

Another Attack on Freedom of Association

After the Supreme Court's decision, another organization, Americans for Safe Access, began lobbying for AB 2279, a bill in the California state legislature to prevent employers from firing employees who test positive for marijuana. In an April e-mail to its members, including me, Karen O'Keefe, MPP's assistant director of state policies, urged us to support the bill. In other words, the MPP urged its members to support a further restriction on freedom of association for California employers.

On principle these attacks on freedom by self-styled friends of freedom are wrong. They are also frustrating for many of us who want people to be free to take whatever drugs they wish. The reason is that the fight for drug freedom has been a climb up a very steep hill. After almost a century of drug prohibition and government propaganda, most Americans are badly misinformed about and prejudiced against drugs. Yet we have seen glimmers of hope as legislators and voters in state after state have tried to loosen the government's stranglehold on marijuana.

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One thing most advocates of drug criminalization insist on is that employers be free not to hire those who use drugs, even if they don't use them on the job. In advocating drug freedom, I have always assured people that I also advocate freedom of association for employers. But the Drug Policy Alliance and the Marijuana Policy Project have confirmed some of the worst fears of legalization's opponents. The impression one gets is that these two organizations care only about drug freedom and are willing to trample on other freedoms. If they succeed in further restricting freedom of association, then, whatever their intent, they will make the drug-legalization hill even steeper.

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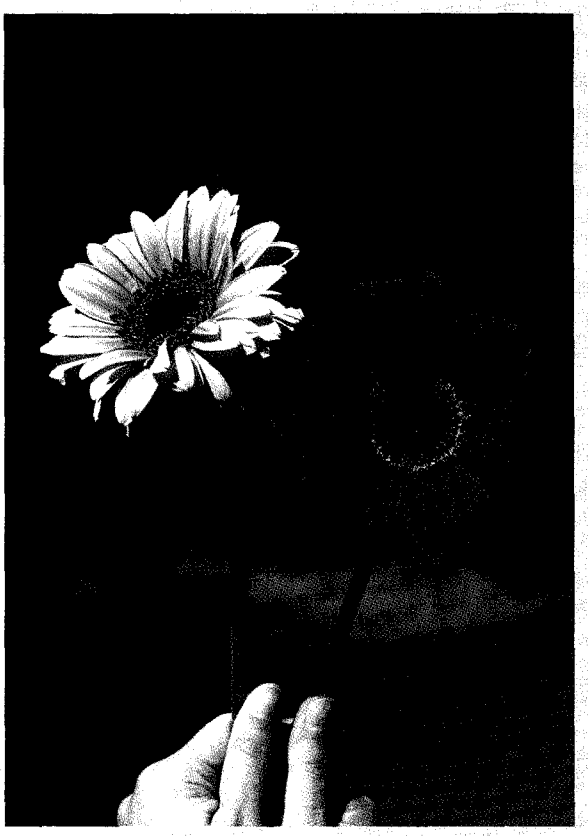

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